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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket Nos. RM87-34-055 and RM87-34-056; Order No. 500-E]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: May 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule; order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying requests for rehearing of Order Nos. 500-C and 500-D. The rehearing applicants generally contended that the Order No. 500 take-or-pay crediting regulations improperly reduce the take-or-pay relief afforded by the interim rule adopted in Order No. 500. The Commission finds that no further changes in the interim rule adopted in Order No. 500 are necessary. However, the Commission will treat the rehearing requests as comments and consider the contentions made in those requests in developing the final rule.

EFFECTIVE DATE: May 6, 1988.

FOR FURTHER INFORMATION CONTRACT: Richard Howe, Jr., Office of General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8274.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, and Charles A. Trabandt.

Thirteen requests for rehearing of Order No. 500-C [1] and four requests for rehearing of Order No. 500-D [2] have been filed with the Commission. The rehearing applicants generally contend that the amendments to the Order No. 500 take-or-pay crediting regulations, adopted in Order No. 500-C and extended in Order No. 500-D, improperly reduce the take-or-pay relief afforded by the interim rule adopted in Order No. 500.

The Commission adopted the Order No. 500 interim rule to respond to the decision the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distribution* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), on an interim basis while the Commission develops a final rule responding to the Court's decision. The Commission believes that no further changes in the interim rule are necessary in order to address the Court's concerns on an interim basis. Accordingly, the Commission denies rehearing of Order Nos. 500-C and 500-D. The Commission will, however, treat the rehearing requests as comments and consider the contentions made in those requests in developing the final rule.

The Commission orders:

The requests for rehearing of Order Nos. 500-C and 500-D are denied.

By the Commission. Commissioner Trabandt dissented in part with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Opinion of Commissioner Charles A. Trabandt, Dissenting in Part

I dissent in part because of serious reservations about the status of the Commission's efforts under the Interim Rule adopted in Order No. 500 and the effect of this Order on those efforts.

Ostensibly, this order on rehearing of Order Nos. 500-C and 500-D is solely justified by the rationale that denial of rehearing here is necessary to avoid any question concerning the extent to which the interim rule adopted in Order No. 500 is ripe for judicial review. Previously, the Commission had tolled rehearing of Order Nos. 500-C and 500-D. Denial of rehearing now will permit judicial review of the interim rule as currently in effect to proceed without delay, according to that rationale. Some parties may have construed Order No. 500-D to be an order on rehearing and, as a result, the last day for filing a petition for review of that order would be May 9, 1988. So, in effect, this order is postulated as a largely procedural action to avoid unnecessary litigation over judicial reviewability issues related to the current form of the interim rule. Consequently, it is argued, the Commission merely is acting to facilitate prompt judicial review of the Interim Rule in its current form without the potential complication of the tolled rehearings of Order Nos. 500-C and 500-D.

Nevertheless, the Order, in paragraph two of the slip opinion states, "The Commission believes that no further changes in the interim rule are necessary in order to address the court's concerns on an interim basis" and indicates that "the Commission will, however, treat the rehearing requests as comments and consider the contentions made in those requests in developing the final rule." Those otherwise undistinguished sentences in the second paragraph raise several serious reservations which have precipitated this separate opinion. Those reservations include the legal status of the interim rule, the status of the take-or-pay survey under Order No. 500, and the Commission's course of action to arrive finally at a Final Rule. In my judgement, this order is an appropriate point to address those reservations in the hope of clarifying the Commission's direction and making any necessary adjustments or corrections.

Recent public statements by Commission officials have indicated for the first time that the Commission will act on the Final Rule sometime by the end of 1988, but not before September. Those statements raise both legal and policy concerns, which are exacerbated by this order. As a legal matter, the courts have established standards that an agency must meet when it seeks to invoke the "good cause" exception of the Administrative Procedure Act and adopt an Interim Rule effective immediately. Those standards were articulated by the courts in a long line of cases, notably *Mid-Tex Electric Co-op v. FERC*, 822 F. 2d 1123, 1131-1134 (D.C. Cir. 1987); *American Transfer & Storage Co. v. ICC* 719 F. 2d 1283, 1292-1297 (5th Cir. 1983); and a series of decisions

[1] 52 FR 48986 (Dec. 29, 1987).
[2] 53 FR 7893 (March 8, 1988).

involving the Clean Air Act. The cases teach that the courts will " 'narrowly construe [ ] [the good cause exception] and reluctantly countenance [ ]' " agency deviations from the usual procedures of issuing a Notice of Proposed Rulemaking and inviting comment before making a rule effective. *Mid-Tex*, 822 F. 2d at 1132. In addition, because "the interim status of the * * *. rule is a significant factor * * *", *Mid-Tex*, 822 F. 2d at 1132, the agency must prove that the rule will truly last for a short period.

The court previously has rejected prior challenges to Order No. 500 under the *Mid-Tex* reasoning in large part because the Commission repeatedly has argued that we were going to fashion promptly a final rule in this docket. Now, it appears that there is no intention to act promptly and the Interim Rule will remain effective without further change for the bulk of 1988. Inevitably, those stated intentions will cause questions to be raised about our past representations and the legal status of the Interim Rule, which will be in effect for a long time and for all practical purposes now has become *de facto* permanent for the immediate and foreseeable future. Also, I am concerned that the fact of any further judicial review of the Interim Rule in its current state may be argued by some for the conclusion that the Commission should await a decision by the court before any action on the Final Rule. That would have the consequence of further locking in the near-term permanency of the Interim Rule. Under any scenario, however, I believe the Commission should move immediately to complete action on a final rule.

As a matter of policy, several comments are relevant to this discussion. First, the Full Commission, upon adoption of this Order, will have lost the capability to take additional action on Order No. 500. Moreover, as discussed in my concurring opinion to the Notice of Proposed Rulemaking for Brokering of Interstate Natural Gas Pipeline Capacity (Docket No. RM88–13–000, issued April 4, 1988), at pages 8 and 9, the Commission cannot act to modify the effective Interim Rule unless a notational item or an agenda item are scheduled by the Chairman and the staff, even if a majority of the Full Commission has concluded that modification is necessary. As a result, there now exists a virtual procedural veto over any further modifications in the hands of the Chairman and the staff. Thus, the current form of the Interim Rule can remain unmodified for an indefinite period in the future. I do not support that inevitable procedural result of this order.

Second, Order No. 500–C was an admitted compromise intended only to prevent the most significant of the inadvertent and unintended negative aspects of the take-or-pay crediting mechanism which became effective on January 1, 1988. By its own terms, many of the modifications in Order No. 500–C were scheduled to expire on March 31, 1988, because the Commission was going to act on the Final Rule by that time. Order No. 500–C also sought specific comments on further modifications to the take-or-pay crediting mechanism, which I deemed of critical importance to correct other serious deficiencies in the crediting mechanism. I still believe we should consider these further modifications to the crediting mechanism, particularly if the Interim Rule is going to remain effective for the bulk of 1988. Consequently, I do not support the statement that the Commission believes no further changes in the Interim Rule are necessary.

The essential compromise in Order No. 500–C was the decision to allow the crediting mechanism to become effective on January 1, but to act to remedy a number of the identified problems in the operation of the mechanism. As I have often stated, my support for the crediting mechanism in Order No. 500 was based solely on the fact that it was intended to be a less offensive option than full blown conditioned access. Such conditioned access would have destroyed in large measure the open access transportation program under Order No. 436, by generally restoring unconstrained pipeline monopoly power in the name of take-or-pay relief.

Order Nos. 500–B and 500–C were efforts to reduce the enormous potential dislocation of transportation, interruption of services, and disruption of natural gas markets which otherwise would have been triggered by the crediting mechanism. Those orders decidedly do not stand for the proposition, then or now, that I unconditionally support any generic take-or-pay crediting mechanism. And, several of the concepts on which we sought comment in Order No. 500–C were intended clearly to signal that result. Order No. 500–D was adopted solely because the further passage of time without action on a Final Rule made necessary extension of the expiring exemptions by March 31 to prevent chaos in the market place. Order No. 500–D did not stand for the proposition of affirmative support for the form of the crediting mechanism in the Interim Rule, but rather was an effort again to preserve on-going open access transportation. Consequently, there still is the need to complete action on the other pending modifications to the Interim Rule, which this order apparently would foreclose.

Commission officials also have made public statements about the immediate need for action on the so-called "Title I" issue in the context of our continued consideration of the take-or-pay question. The "Title I" issue, of course, is the legal issue of whether payments related to take-or-pay made by pipelines to producers under take-or-pay clauses arguably result in total payments for the contracted natural gas which exceed the Maximum Lawful Price for that particular category of gas under Title I of the Natural Gas Policy Act. The Title I issue was raised in the comments on Order No. 500 and it also has been the subject of a number of complaints filed by parties with the Commission. Also, as many as eighteen separate pending cases, or more, include the Title I issue which awaits resolution.

One of the pending complaints filed by ANR Pipeline Company in Docket No. CP86–54–000 was discussed by the court in the *Wagner & Brown v. ANR Pipeline Co.*, 837 F. 2d 199 (5th Cir. 1988). The court in that case found Wagner & Brown's attack on the District Court's dismissal of its lawsuit there to be persuasive (the District Court dismissed on the grounds of the doctrine of primary jurisdiction, because of the pending complaint at FERC), and ordered the District Court simply to stay the proceedings for 180 days to afford FERC an opportunity to rule on the ANR complaint. After the 180 days, the District Court was directed to proceed to adjudicate the rights of the parties without further deference to the expertise of FERC, to ensure that Wagner & Brown's rights will not be unreasonably delayed or lost.

The comments of some officials apparently have placed great emphasis on an assertion (which I question seriously) that the 5th Circuit in *Wagner & Brown* effectively has ordered the Commission to rule on the Title I issue within the 180 days, which runs into August of this year. On that theory, there is a good deal of attention now on the ANR complaint proceedings and much speculation that the Commission will address the issue in some procedural manner with generic impact outside the context of the Order No. 500 rulemaking proceedings. I, of course, must await the presentation of the record in any particular complaint proceeding or other specific

adjudication, before considering the relevant legal and policy issues and the substantive merits of the individual cases.

Nevertheless, I would be concerned from a general procedural point of view if the Commission now, at this late date, were to begin addressing the various take-or-pay issues piecemeal outside the generic Order No. 500 proceedings, while at the same time apparently delaying indefinitely action on the Order No. 500 Final Rule. Order No. 500 has always been intended to be a comprehensive response to the court's remand in the *AGD* case calling for reasoned decisionmaking by the Commission on the general take-or-pay issue. The Commission has officially informed the courts in other cases of its intent to use Order No. 500 as the primary vehicle for addressing the take-or-pay issue. Without opining prematurely in any way on the substantive merits of the Title I issue in any pending adjudication, I believe the Commission is obligated to consider carefully any piecemeal approach to the interrelated take-or-pay issues. My concern is heightened considerably by the data problems with the Commission's take-or-pay survey discussed below.

The very pregnant question now becomes—where are we today and where are we going on Order No. 500 and the take-or-pay issue? On April 11 and 12, 1988, the Commission held public hearings on Order No. 500 and obtained oral and written comments from witnesses representing all segments of the natural gas industry and the consuming public.

The hearings highlighted for the Full Commission the central issue in Order No. 500, which is—simply stated—What is the exact nature of the take-or-pay problem today in mid-1988? As Commissioner Sousa observed, quoting Yogi Berra, it was "deja vu all over again." While there were many fine statements of testimony on open access transportation, the take-or-pay crediting mechanism, the take-or-pay direct billing mechanism, the Gas Inventory Charge, and other more specific aspects of Order No. 500, the major focus of all the testimony taken together was on the nature of the take-or-pay problem. In many respects, it was, so to speak, a "tale of two take-or-pay surveys."

First, the Interstate Natural Gas Association of America (INGAA) with a series of pipeline top executives presented the Commission with a summary of a new take-or-pay survey of its member pipelines. A formal report of the survey was submitted to the Commission after the hearings. The INGAA survey, supported by each of the top pipeline executives in succession, concludes that there still is a major and broad-based take-or-pay problem in the interstate pipeline industry which will continue into the future. The testimony indicated that there was post-settlement take-or-pay exposure of $7.4 billion at the end of 1987 affecting 19 of the 26 major pipelines who were responsible for 90% of flowing gas. The survey report indicated that $8 billion in exposure was resolved by voluntary renegotiation of contracts in 1987. INGAA indicated that of the total $7.4 billion exposure at the end of 1987, $2.9 billion (39%) was under negotiation, $2.2 billion (30%) was in litigation or arbitration, and $2.3 billion (31%) had not advanced yet to active negotiation with producers. Also, INGAA stated that 62% of the exposure was associated with contracts involving jurisdictional natural gas. The testimony indicated that take-or-pay exposure will continue to build in 1988, because Order No. 500 and the crediting mechanism have been largely ineffective in mitigating accrual of additional exposure under open access transportation. Consequently, it was argued, the only option for the Commission at this time is to invoke its authority under section 5 of the NGA on a generic basis to strike down prospectively the offending take-or-pay clauses in existing contracts, for which it is argued further we have clear and unambiguous authority in the face of these survey results.

Second, the Natural Gas Supply Association (NGSA) with a series of major and independent producers testified to an entirely different take-or-pay situation. A new NGSA survey submitted to the Commission at the hearing provides dramatically different results than the INGAA report and testimony. NGSA states that $14.5 billion of $17.2 billion in total take-or-pay exposure accrued by interstate pipelines was resolved by the end of 1987, or 84% of the total resolved, leaving $2.7 billion outstanding. Compare that figure to the INGAA figure of $7.4 billion. Further, according to NGSA, $3.1 billion of otherwise accruing new 1988 potential take-or-pay exposure already has been resolved in contract negotiations. NGSA argues that only four pipelines have 54% of the liabilities in the current survey and 80% is accounted for by eight pipelines. Purchases from those eight pipelines, according to NGSA, represent only 46% of pipeline gas purchases from producers.

The 84% resolution figure in the most recent survey compares favorably to the 71% in the 1987 NGSA survey and the 59% in the 1986 NGSA survey, argues NGSA, supporting the conclusion that the process of voluntary renegotiation has been successful. Finally, NGSA's survey indicates that 93% of gas released by pipelines and sold to non-pipeline parties provided volumetric take-or-pay relief, supporting the assertion that open access transportation should not cause substantial new take-or-pay liabilities, NGSA concludes. Consequently, NGSA concludes that there is no demonstrated need for a generic section 5 action and, further, the Commission should abandon the generic take-or-pay crediting mechanism, particularly the cross-crediting feature.

Other producer witnesses representing the large majority of the producer segment of the industry testified that there has been substantial renegotiation over the last year, particularly in the second half of 1987. Almost every producer reported that the large percentage of outstanding take-or-pay claims had been resolved in contract renegotiations, with the individual totals in the hundreds of millions and some close to or in excess of a billion dollars. Most had outstanding claims with only one or two pipelines, according to the witnesses, and in several cases future exposure, as well as past exposure, had been resolved through voluntary renegotiation. The message echoed repeatedly by the individual producers, major and independent, was that the voluntary renegotiations had resolved all but a relatively small portion of outstanding claims, as reflected more generally in the NGSA survey. Additionally, many producer witnesses challenged directly the assertion that the Commission had the legal authority to invoke section 5 on any generic basis under these facts in this rulemaking docket.

Last August, the Commission in Order No. 500 initiated a take-or-pay data survey as part of our discussion about "Commission Action under NGA Section 5." We stated then,

> The Commission will aggregate the data submitted and analyze it promptly. If the information demonstrates that action under NGA section 5, or any other action (such as rescinding the incentive ceiling price for tight formation gas established under NGPA section 107(c)(5)), would contribute to solving pipeline take-or-pay problems, the Commission will then consider action.

Since August, the Commission repeatedly has argued in subsequent cases and generic rulemakings, such as Order No. 490 Abandonment Policy, that

Order No. 500 was where we ultimately would determine the nature and address the take-or-pay issue. Now, some nine months later, the Full Commission has not received a single report of any kind from our own survey commissioned in Order No. 500. In fact, to date, the Full Commission has not even been provided access to the unaggregated data submitted by the individual interstate pipelines and individual producers. Unfortunately, as a result, the Full Commission, at this point, still is proceeding in a total analytical vacuum to consider the testimony received in April.

Furthermore, the Commission survey required the submission of take-or-pay data as of July 1, 1987. Much of the data submitted apparently reflects take-or-pay exposure, payments and resolution as of the end of 1986. Clearly, after the April testimony, our own survey is now woefully stale and largely out of date. And, whenever the Full Commission is finally presented a report of the data filed as of the first half of last year, any analytical results and conclusions will be of highly questionable value in the context of forming the basis for considering action under section 5, or any other authorities for that matter, in a final rule. Consequently, it appears inevitable that the Full Commission must act promptly to develop a revised approach to our take-or-pay data survey and subsequent consideration of action. At a minimum, it appears intuitively obvious that we should seek another round of take-or-pay data, which is as current and accurate as possible to reflect the take-or-pay realities in mid-1988. Put another way, it is now obvious that we must resolve the apparent tale of two take-or-pay surveys, before we attempt to fashion a Final Rule.

Chairman Jim Nugent of the Texas Railroad Commission perhaps put it best in his testimony. He stated that Commission's view that the *AGD* Court had vacated and remanded Order No. 436 to this Commission for reasoned decisionmaking on the take-or-pay issue. That reasoned decisionmaking, in the judgment of the Railroad Commission, requires this Commission to take the following analytical steps:

1. What is a clear definition of the magnitude and parameters of any existing contract problem?
2. Is the problem generic or quite specific to certain pipelines?
3. What is the *appropriate* remedy tailored to the *specific* problem?
4. Do the costs of the remedy exceed the perceived benefits?
5. Develop some form of streamlined regulatory approach to avoid unnecessary regulation of the industry.

In the context of that testimony from the Chairman of the Texas Railroad Commission, we now are faced with the serious dilemma that we are still locked in step 1. We are still trying to determine in some analytically acceptable fashion what the exact nature of the problem really is at this time.

Unless and until we can resolve that threshold issue, it is premature in my judgment to be debating the legality or the advisability of a generic section 5 action, just as we concluded last August. The exact nature of the take-or-pay problem in mid-1988 must be the analytical foundation on which the Full Commission must construct *any* Final Rule in the Order No. 500 docket. If voluntary renegotiation, which has been the centerpiece of our natural gas policies for the past four years, is as successful as claimed by NGSA and producers, we may get one analytical result and one related conclusion for action. If, in the alternative, the INGAA and interstate pipeline survey is persuasive, we may get a different analytical result and a related different conclusion as to necessary action. I, therefore, urge the Full Commission to resolve the "tale of two take-or-pay surveys" in the testimony received in April as the absolutely necessary first step in our prompt, future consideration of Order No. 500.

To that end, I have requested that the Full Commission receive a status report on the survey and a brief summary of the data submitted on a pipeline and producer specific basis. In any event, in light of the extended passage of time, the staff also should arrange for direct access to the individual pipeline and producer submissions for each Commissioner and his staff, in order that we may review the data directly if we choose to do so. For instance, I would plan to review the submissions of selected pipelines and producers under appropriate procedures respecting confidentiality, as we always do.

Additionally, I have recommended that the Commission require updated data from all participants to the take-or-pay survey.

The data should be updated to include (1) supplemental information on accrued take-or-pay exposure and liability and (2) any further resolution since July 1, 1987, of take-or-pay matters as of this time. The additional data should be submitted by June 15, 1988. Consequently, I also have requested that the Commission, as soon as possible, consider an order which would require all participants in the take-or-pay survey to make such a supplemental filing to update their original submissions.

I would conclude by expressing the serious concern that the Commission at this time appears to be adrift in a hostile sea of analytical ignorance and uncertainty, without a clear and certain course to resolution of the take-or-pay issue and a Final Rule under Order No. 500. Additionally, our action in this Order appears to lock in place the Interim Rule in its current form for the foreseeable future, without the direction to reach a Final Rule at a particular point on our regulatory chart. As Gibran stated in *The Prophet*, "If either your sails or your rudder be broken, you can but toss and drift, or else be held at a standstill in mid-sea." It is long since past time, in my judgment, that the Commission develop a course of action to obtain promptly the necessary data and analysis to define the actual take-or-pay problem, be it largely generic to most pipelines or quite specific to a few pipelines and be it largely resolved by voluntary renegotiation or continuing to grow despite the Interim Rule in Order No. 500.

As soon as that definition is complete, the Commission then must proceed promptly to complete action on the Final Rule with full consideration of all comments in the extensive record adduced from public comments, including the April hearings. The Commission has an obligation to the natural gas industry and the American consumer to complete action as soon as the required analysis is available. That obligation quite simply is not satisfied by continuing to "toss and drift or else be held at a standstill in mid-sea", as now, and allow the Interim Rule to remain in effect unmodified for the foreseeable future, as this Order would suggest.

Charles A. Trabandt,
Commissioner.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182, 184, and 186

[Docket No. 79N-0269]

Iron and Iron Salts; Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that

elemental iron (iron) and ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric phosphate, ferric pyrophosphate, and ferric sulfate (iron salts) are generally recognized as safe (GRAS) as direct human food ingredients. However, the agency is not taking any action on the listing of iron and several iron salts as GRAS substances in dietary supplements. FDA is also affirming that ferric oxide and oxides of iron are GRAS for use as indirect human food ingredients. FDA is not affirming that ferric sodium pyrophosphate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric ethylenediamine tetraacetate (EDTA), and sodium ferricitropyrophosphate are GRAS as direct human food ingredients because of the lack of data on their safety and use. Additionally, FDA is not taking any action on the listing in Part 181 (21 CFR Part 181) of iron caprylate, iron tallate, iron linoleate, and iron naphthenate as prior-sanctioned driers that may migrate from food packaging. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency.

DATES: Effective June 13, 1988. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1296, 184.1301, 184.1304, 184.1307d, 184.1308, 184.1315, and 184.1375 effective on June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 21, 1987 (52 FR 13086), FDA published a proposal to affirm that elemental iron (iron) and ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric phosphate, ferric pyrophosphate, and ferric sulfate (iron salts) are GRAS for use as direct human food ingredients in conventional food and in infant formula. (FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in 21 CFR 170.3(n).) However, the agency did not propose to take any action on the listing of iron and several iron salts as GRAS substances in dietary supplements. FDA also proposed to affirm that ferric oxide and oxides of iron are GRAS for use as indirect human food ingredients. Also in this proposal, FDA proposed not to take any action on the listing in Part 181 (21 CFR Part 181) of iron caprylate, iron tallate, iron linoleate, and iron naphthenate as prior-sanctioned driers that may migrate from food packaging material. Additionally, FDA proposed not to affirm that ferric sodium pyrophosphate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric ethylenediamine tetraacetate (EDTA), and sodium ferricitropyrophosphate are GRAS as direct human food ingredients because of a lack of safety and use data. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with 21 CFR 170.35, copies of the scientific literature review and of the report of the Select Committee on GRAS Substances (the Select Committee) on iron and iron salts are available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the documents are also available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of iron and iron salts, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than for the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Specific Prior-Sanctioned Food Ingredients (21 CFR Part 181), or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for iron and iron salts were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for uses of these ingredients under conditions different from those set forth in this final rule has been waived.

FDA received three comments in response to the agency's proposal on iron and iron salts. Two comments were from distributors and suppliers of iron and iron salts. The other comment was submitted on behalf of a chemical laboratory. A summary of each of these comments and the agency s responses follow:

1. One comment from a distributor and supplier expressed its support of the proposal.

The agency acknowledges this comment. Because this comment agrees with the proposal, the agency has not made any changes in the regulations as a result of this comment.

2. Another comment from a chemical laboratory addressed the description for the preparation of ferrous lactate in proposed § 184.1311. This comment asserted that ferrous lactate can also be prepared by reacting sodium lactate with ferrous sulfate. Additionally, this comment recommended that the Japanese Standards of Food additives (JSFA–V; 1986) be consulted in developing specifications for ferrous lactate.

The agency has carefully evaluated this comment. The agency agrees that the comment describes a reaction that is used to produce food-grade ferrous lactate. Therefore, the agency has modified the regulation on ferrous lactate to include the reaction of sodium lactate plus ferrous sulfate in the manufacture of this substance. The agency will consider the specifications listed in the Japanese Standards of Food Additives in developing specifications for ferrous lactate.

3. One comment from a distributor objected to the agency's decision not to affirm as GRAS iron peptonate because of a lack of consumer exposure data and safety information. The company that submitted this comment stated that it has been importing iron peptonate and selling it in this country. The company stated that "during the last 1½ years [it had] sold a total of approximately 30,000 pounds." The company also stated that "the material is being used by our customers in dietary supplements, veterinary and possibly other uses." However, the comment provided no documentation to substantiate these claims.

In the preamble to the proposal, the agency stated that consumer exposure data and relevant safety information are necessary to evaluate the safety of a food ingredient. Unless such data and information are forthcoming, the agency has no basis on which to affirm that the use of a substance is GRAS. No safety information has been provided for iron peptonate, nor has documented evidence been submitted to show that this substance is being used as a food

ingredient and to provide a basis for developing consumer exposure data. In the absence of such information and evidence, the agency cannot affirm that the use of iron peptonate as a food ingredient is GRAS.

Persons seeking FDA approval for the direct food use of iron peptonate may submit a food additive or GRAS affirmation petition in accordance with 21 CFR 170.35 or 171.1.

In several of the regulations listed in the proposal, the agency inadvertently omitted the oxidation state for iron in the more formalized nomenclature for iron compounds. For example, in proposed § 184.1298 *Ferric citrate*, the term "iron citrate" should have been listed as "iron (III) citrate" in paragraph (a). Therefore, the agency is making this minor correction in this regulation, and in several others, to reflect the more formalized nomenclature. Additionally, FDA has edited paragraph (c) of the regulations to clarify it and to eliminate redundancies. Also, the agency has corrected the molecular formula in § 184.1304.

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for several of the iron compounds being affirmed as GRAS for use as direct human food ingredients and would incorporate these specifications into the regulations when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, those iron compounds for direct food use must comply with the description in the regulations and be of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of April 21, 1987 (52 FR 13086). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Docket Management Branch (address above).

List of Subjects

21 CFR Part 182

Food ingredients, Spices and flavorings.

21 CFR Part 184

Food ingredients, Incorporation by reference.

21 CFR Part 186

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 182, 184, and 186 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

§ 182.90 [Amended]

2. Section 182.90 *Substances migrating to food from paper and paperboard products* is amended by removing the entries for "Ferric sulfate," "Ferrous sulfate," "Iron reduced," and "Oxides of iron."

§§ 182.8301, 182.8304, 182.8306, 182.8308, 182.8311, 182.8315, and 182.8375 [Removed]

3. Sections 182.8301 *Ferric phosphate*, § 182.8304 *Ferric pyrophosphate*, § 182.8306 *Ferric sodium pyrophosphate*, § 182.8308 *Ferrous gluconate*, § 182.8311 *Ferrous lactate*, § 182.8315 *Ferrous sulfate*, and § 182.8375 *Iron reduced* are removed.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

4. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

5. A new § 184.1296 is added to read as follows:

§ 184.1296 Ferric ammonium citrate.

(a) Ferric ammonium citrate (iron (III) ammonium citrate) is prepared by the reaction of ferric hydroxide with citric acid, followed by treatment with ammonium hydroxide, evaporating, and drying. The resulting product occurs in two forms depending on the stoichiometry of the initial reactants.

(1) Ferric ammonium citrate (iron (III) ammonium citrate, CAS Reg. No. 1332–98–5) is a complex salt of undetermined structure composed of 16.5 to 18.5 percent iron, approximately 9 percent ammonia, and 65 percent citric acid and occurs as reddish brown or garnet red scales or granules or as a brownish-yellowish powder.

(2) Ferric ammonium citrate (iron (III) ammonium citrate, CAS Reg. No. 1333–00–2) is a complex salt of undetermined structure composed of 14.5 to 16 percent iron, approximately 7.5 percent ammonia, and 75 percent citric acid and occurs as thin transparent green scales, as granules, as a powder, or as transparent green crystals.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 116–117 (Ferric ammonium citrate, brown) and p. 117 (Ferric ammonium citrate, green), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food as nutrient supplements as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredients may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

6. A new § 184.1297 is added to read as follows:

§ 184.1297 Ferric chloride.

(a) Ferric chloride (iron (III) chloride, $FeCl_3$, CAS Reg. No. 7705–08–0) may be

prepared from iron and chlorine or from ferric oxide and hydrogen chloride. The pure material occurs as hydroscopic, hexagonal, dark crystals. Ferric chloride hexahydrate (iron (III) chloride hexahydrate, $FeCl_3 \cdot 6H_2O$, CAS Reg. No. 10025-77-1) is readily formed when ferric chloride is exposed to moisture.

(b) The Food and Drug Administration is developing food-grade specifications for ferric chloride in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a flavoring agent as defined in § 170.3(o)(12) of this chapter, with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

7. A new § 184.1298 is added to read as follows:

§ 184.1298 Ferric citrate.

(a) Ferric citrate (iron (III) citrate, $C_6H_5FeO_7$, CAS Reg. No. 2338-05-8) is prepared from reaction of citric acid with ferric hydroxide. It is a compound of indefinite ratio of citric acid and iron.

(b) The Food and Drug Administration is developing food-grade specifications for ferric citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

(8) A new § 184.1301 is added to read as follows:

§ 184.1301 Ferric phosphate.

(a) Ferric phosphate (ferric orthophosphate, iron (III) phosphate, $FePO_4 \cdot xH_2O$, CAS Reg. No. 10045-86-0) is an odorless, yellowish-white to buff-colored powder and contains from one to four molecules of water of hydration. It is prepared by reaction of sodium phosphate with ferric chloride or ferric citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 118-120, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

9. A new § 184.1304 is added to read as follows:

§ 184.1304 Ferric pyrophosphate.

(a) Ferric pyrophosphate (iron (III) pyrophosphate, $Fe_4(P_{207})_3 \cdot xH_{20}$, CAS Reg. No. 10058-44-3) is a tan or yellowish white colorless powder. It is prepared by reacting sodium pyrophosphate with ferric citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 120, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been wavied.

10. A new § 184.1307 is added to read as follows:

§ 184.1307 Ferric sulfate.

(a) Ferric sulfate (iron (III) sulfate, $Fe_2(SO_4)_3$, CAS Reg. No. 10028-22-5) is a yellow substance that may be prepared by oxidizing iron (II) sulfate or by treating ferric oxide or ferric hydroxide with sulfuric acid.

(b) The Food and Drug Administration is developing food-grade specifications for ferric sulfate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a flavoring agent as defined in § 170.3(o)(12) of this chapter, with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

11. A new § 184.1307a is added to read as follows:

§ 184.1307a Ferrous ascorbate.

(a) Ferrous ascorbate (CAS Reg. No. 14536-17-5) is a reaction product of ferrous hydroxide and ascorbic acid. It is a blue-violet product containing 16 percent iron.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous ascorbate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2))

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

12. A new § 184.1307b is added to read as follows:

§ 184.1307b Ferrous carbonate.

(a) Ferrous carbonate (iron (II) carbonate, $FeCO_3$, CAS Reg. No. 563-71-3) is an odorless, white solid prepared by treating solutions of iron (II) salts with alkali carbonate salts.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous carbonate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Foods, Drug, and Cosmetic Act

(the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

13. A new § 184.1307c is added to read as follows:

§ 184.1307c Ferrous citrate.

(a) Ferrous citrate (iron (II) citrate, ($C_6H_6FeO_7$), CAS Reg. No. 23383–11–1) is a slightly colored powder or white crystals. It is prepared from the reaction of sodium citrate with ferrous sulfate or by direct action of citric acid on iron filings.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

14. A new § 184.1307d is added to read as follows:

§ 184.1307d Ferrous fumarate.

(a) Ferrous fumarate (iron (II) fumarate, ($C_4H_2FeO_4$), CAS Reg. No. 141–01–5) is an odorless, reddish-orange to reddish-brown powder. It may contain soft lumps that produce a yellow streak when crushed. It is prepared by admixing hot solutions of ferrous sulfate and sodium fumarate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 120–122, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)), or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

15. A new § 184.1308 is added to read as follows:

§ 184.1308 Ferrous gluconate.

(a) Ferrous gluconate (iron (II) gluconate dihydrate, $C_{12}H_{22}FeO_{14}.2H_2O$, CAS Reg. No. 6047-12-7) is a fine yellowish-gray or pale greenish-yellow powder or granules. It is prepared by reacting hot solutions of barium or calcium gluconate with ferrous sulfate or by heating freshly prepared ferrous carbonate with gluconic acid in aqueous solution.

(b) The ingredient meets the specifications of the Food Chemcials Codex, 3d Ed. (1981), pp. 122–123, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1200 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

16. A new § 184.1311 is added to read as follows:

§ 184.1311 Ferrous lactate.

(a) Ferrous lactate (iron (II) lactate, $C_6H_{10}FeO_6$, CAS Reg. No. 5905–52–2) in the trihydrate form is a greenish-white powder of crystalline mass. It is prepared by reacting calcium lactate or sodium lactate with ferrous sulfate or by direct reaction of lactic acid with iron filings.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous lactate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

17. A new § 184.1315 is added to read as follows:

§ 184.1315 Ferrous sulfate.

(a) Ferrous sulfate heptahydrate (iron (II) sulfate heptahydrate, $FeSO_4.7H_2O$, CAS Reg. No. 7782–63–0) is prepared by the action of sulfuric acid on iron. It occurs as pale, bluish-green crystals or granules. Progressive heating of ferrous sulfate heptahydrate produces ferrous sulfate (dried). Ferrous sulfate (dried) consists primarily of ferrous sulfate monohydrate (CAS Reg. No. 17375–41–6) with varying amounts of ferrous sulfate tetrahydrate (CAS Reg. No. 20908–72–9) and occurs as a grayish-white to buff-colored powder.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 123 (Ferrous sulfate heptahydrate) and p. 124 (ferrous sulfate, dried), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or available for inspection at the Office of Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food as nutrient supplements as defined in § 170.3(o)(20) of this chapter and as a processing aid as defined in § 170.3(o)(24) of this chapter, with no limitation other than current good manufacturing practice. The ingredients may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

18. A new § 184.1375 is added to read as follows:

§ 184.1375 Iron, elemental.

(a) Iron, elemental (CAS Reg. No. 7439–89–6) is metallic iron obtained by any of the following processes: reduced iron, electrolytic iron, and carbonyl iron.

(1) Reduced iron is prepared by reacting ground ferric oxide with hydrogen or carbon monoxide at an elevated temperature. The process results in a grayish-black powder, all of which should pass through a 100-mesh sieve. It is lusterless or has not more than a slight luster. When viewed under a microscope, it appears as an amorphous powder free from particles having a crystalline structure. It is stable in dry air.

(2) Electrolytic iron is prepared by electrodeposition. It is an amorphous, lusterless, grayish-black powder. It is stable in dry air.

(3) Carbonyl iron is prepared by the decomposition of iron pentacarbonyl. It occurs as a dark gray powder. When viewed under a microscope, it appears as spheres built up with concentric shells. It is stable in dry air.

(b) Iron, elemental (carbonyl, electrolytic, or reduced) meets the specifications of the Food Chemicals Codex, 3d Ed. (1981) (iron, carbonyl, p. 151; iron, electrolytic, pp. 151–152; iron, reduced; pp. 152–153), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

19. The authority citation for 21 CFR Part 186 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

20. A new § 186.1300 is added to read as follows:

§ 186.1300 Ferric oxide.

(a) Ferric oxide (iron (III) oxide, Fe_2O_3, CAS Reg. No. 1309–37–1) occurs naturally as the mineral hematite. It may be prepared synthetically by heating brown iron hydroxide oxide. The product is red-brown to black trigonal crystals.

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(2) The ingredient is used as levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

21. A new § 186.1374 is added to read as follows:

§ 186.1374 Iron oxides.

(a) Iron oxides (oxides of iron, CAS Reg. No. 97705–33–85) are undefined mixtures of iron (II) oxide (CAS Reg. No. 1345–25–1, black cubic crystals) and iron (III) oxide (CAS Reg. No. 1309–37–1, red-brown to black trigonal crystals).

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(2) The ingredient is used as levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: May 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–10582 Filed 5–11–88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 145

[T.D. 8200]

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the excise tax imposed on the retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Changes in the applicable tax law were made by sections 505 and 506 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987). These regulations affect manufacturers, producers, importers, dealers, and lessors of these articles and will provide them with the guidance needed to comply with the law. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATE: Generally, these regulations apply to heavy trucks, truck trailers and semitrailers, and tractors sold on or after October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Attention: CC:LR:T (LR–1–86). Telephone (202–566–4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Temporary Excise Tax Regulations (26 CFR Part 145) under section 4052 of the Internal Revenue Code of 1986 (Code), as amended by sections 505 and 506 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 100–17, 101 Stat. 256, 258–59) ("the Act"), relating to the excise tax on the sale of heavy trucks, truck trailers and semitrailers, and tractors. The amendments modify temporary regulations previously promulgated under section 512 of the Highway Revenue Act of 1982 (Title V of the

Surface Transportation Assistance Act). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Section 4051(a) of the Code imposes a 12 percent tax on the first retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Section 505(a) of the Act amended section 4052(a)(1) to provide that the term "first retail sale" means "the first sale, for a purpose other than for resale or leasing in a long-term lease, after manufacture, production, or importation".

Under section 4052(a)(1), the leasing of an article on a long-term basis is treated as the first retail sale, and the tax under section 4051 is imposed on such article at the time the article is leased, rather than at the time the manufacturer, producer, or importer sells the article to the lessor. Section 4052(f) provides that the term "long-term lease" means any lease with a term of 1 year or more. The leasing of an article on a short-term basis (*i.e.*, less than one year) before the first retail sale of such article is treated as a taxable use under section 4052(a)(3), and the tax under section 4051 is imposed at the time of that lease.

The tax imposed on either a long-term or short-term lease is computed on a price established by the Commissioner that is based on the retail sales price of similar articles (a constructive sales price). See discussion of "Presumptive retail sales price" below.

Definition of First Retail Sale

Temporary regulations § 145.4052–1, relating to the excise tax on heavy trucks, truck trailers and semitrailers, and tractors, were revised by temporary regulations published in the **Federal Register** on September 13, 1985 (T.D. 8050) (50 FR 37350). Those revised regulations provided that a sale by a manufacturer, producer, or importer is treated as the first retail sale unless either (a) the purchaser is not in the business of leasing and intends to resell the article, or (b) the seller and the purchaser are registered under section 4222 (prescribing rules relating to the registration required to make tax-free sales), and the seller receives a certificate indicating the purchaser's intent to resell the articles.

Section 4052, as amended by the Act, treats a long-term lease as a first retail sale. Sections 145.4052–1 (a)(1), (a)(2), and (a)(3) of these temporary regulations set forth certification requirements that determine when the first retail sale of an article occurs.

Certification Requirements

Section 145.4052–1(a)(2) of these temporary regulations provides that the sale of an article will be taxable as the first retail sale unless (a) the sale is a tax-free sale under section 4221, (b) the purchaser and seller are registered under § 48.4222(a)–1 and the seller in good faith accepts a proper certification from the purchaser that the purchaser intends either to lease the article on a long-term basis or to resell the article, or (c) there has been a prior taxable sale of the article. "Taxable sale" for these purposes includes a long-term lease or a taxable use, such as a short-term lease. If the purchaser does not meet one of the exceptions in § 1.4052–1(a)(2), the seller will be liable for the tax imposed on the sale.

Thus, § 145.4052–1(a)(2) allows a purchaser who intends either to lease on a long-term basis or to resell an article to purchase such article tax-free. In such cases the tax under section 4051 will be imposed on a subsequent taxable sale or use of the article.

Paragraphs (a)(4) and (d)(3)(ii) of § 145.4052–1 set forth special rules regarding imposition of the tax. Section 145.4052–1(a)(4) provides that in certain circumstances tax will be imposed on the resale or long-term lease of a tax-paid trailer or semitrailer and the seller of such trailer or semitrailer shall be liable for such tax. Under § 145.4052–1(a)(4) the seller may in such cases reduce the tax liability by the amount of tax previously paid with respect to the article.

Section 145.4052–1(d)(3)(ii) provides that the tax under section 4051 shall be computed on a price that includes a presumed markup when a person other than a manufacturer, producer, or importer is designated as the seller of an article but (a) such person does not perform significant activities relating to the processing of the sale of the article and (b) the principal purpose of processing the sale through such person is to avoid or evade the presumed markup imposed under section 4052(b)(4)(A)(ii).

Presumptive Retail Sales Price

In order to achieve comparable tax treatment among long-term leases, sales by manufacturers, producers, or importers, and retail sales by other persons, sections 505(b) and 506(a) of the Act amended section 4052(b) by adding new paragraphs (b) (3) and (4). These paragraphs were added to ensure that the tax base of most transactions considered to be taxable sales subject to section 4051 includes either an actual or a presumptive retail markup. As a result, sections 4052(b) (3) and (4) provide that the tax imposed by section 4051 shall, under certain circumstances, be computed on a presumptive retail sales price (*i.e.*, a tax base that includes a presumed markup).

Section 4052(b)(3) provides that the tax imposed on any long-term lease that is treated as the first retail sale of an article shall be computed on a tax base that includes the price at which the article was sold to the lessor, the cost of any parts and accessories installed by the lessor, and an amount equal to a presumed markup. Section 145.4052–1(c)(5) of the regulations is amended to provide that the tax imposed on a short-term lease by a person other than a manufacturer, producer or importer shall also be computed on a tax base that includes the price at which the article was sold to the lessor, the cost of any parts and accessories installed by the lessor, and an amount equal to the presumed markup. However, the leasing of an article by a person other than a manufacturer, producer, or importer will not be subject to tax under section 4051 if such article was previously subject to tax under that section.

Similarly, section 4052(b)(4) provides that the tax imposed on a sale by a manufacturer, producer, or importer shall be computed on a tax base that includes an actual or constructive sales price of the article and an amount equal to a presumed markup.

For purposes of these temporary regulations, a single presumed markup percentage of four percent has been established for most articles subject to section 4051. However, truck trailers, semitrailers, and remanufactured trucks and tractors are subject to a zero percent markup. The imposition of a presumed markup percentage greater than zero percent on these articles is not necessary to carry out the purpose of the section 4051 retail tax because retail sales of trailers and semitrailers are generally made by trailer manufacturers. Similarly, remanufactured trucks and tractors generally are not sold through an established retail distribution network.

The presumed markup percentage is defined under section 4052(b)(3)(B) as "the average markup percentage of retailers of articles of the type involved." The Internal Revenue Service is currently examining whether it is appropriate to exercise its regulatory authority to establish additional markup percentages for different categories of articles. A tax system involving different markups raises a variety of problems relating to administration and enforcement. Therefore, the Service is

requesting comments and suggestions relating to this particular issue in order to administer this tax fairly and efficiently.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Drafting Information

The principal author of these regulations is Maurice B. Foley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 145

Extended due date for payment of certain fuel taxes, Floor stocks refunds, Floor stocks tax, Highway Revenue Act of 1982.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 145 is amended as follows:

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1987 (PUB. L. 100-17)

Paragraph 1. The authority for Part 145 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 145.4052-1 also issued under 26 U.S.C. 4052 (d).

Par. 2. Section 145.4052-1 is amended as follows:

1. Paragraph (a) is revised to read as set forth below.

2. The heading and text for paragraph (b) are revised to read as set forth below.

3. Paragraph (c)(1) is amended by deleting the first sentence and inserting in its place "For purposes of this section and § 145.4051-1, the use of an article will be deemed to be a sale of the article." and by removing from the second sentence the words "unless such article is thereafter sold for resale".

4. Paragraph (c)(5) is amended by deleting the first sentence from paragraph (c)(5)(i) and inserting in its place "Except as provided in paragraphs (c)(5)(ii) and (c)(5)(iii) of this section," and by adding a new paragraph (c)(5)(iii) as set forth below.

5. Paragraph (d) is amended by redesignating paragraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(8), (d)(9), and (d)(10), respectively, and by adding new paragraphs (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), and (d)(7) to read as set forth below.

6. Paragraph (d)(2) is amended by removing the words "paragraph (d)(2)(iii)" from the second sentence of paragraph (d)(2)(iii) and by inserting, in their place, the words "paragraph (d)(8)(iii)".

7. Paragraph (f) is removed.

8. Paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added to read as set forth below.

9. A new paragraph (g) is added to read as set forth below.

§ 145.4052-1 Special rules and definitions.

(a) *First retail sale*—(1) *General rule.* For purposes of section 4051(a)(1) and § 145.4051-1, the term "first retail sale" means a taxable sale described in paragraph (a)(2) of this seciton.

(2) *Taxable sale.* The sale of an article is a taxable sale unless—

(i) The sale is a tax-free sale under section 4221,

(ii) Both the purchaser and the seller are registered under section 4222 and § 48.4222(a)-1 and the seller has in good faith accepted from the purchaser a proper certification, as provided in paragraph (a)(6) of this section, executed in good faith, that the purchaser intends to lease such article on a long-term basis or resell such articles, or

(iii) There has been a prior taxable sale of the article. Notwithstanding the preceding clause, the sale of a chassis or body of a trailer or semitrailer ("trailer or semitrailer") less than six months after a taxable sale of the article shall be treated as a taxable sale.

(3) *Computation of tax*—(i) *In general.* If the sale of an article is a taxable sale under paragraph (a)(2) of this section, the tax shall be computed on the price as determined under paragraph (d) of this section.

(ii) *Exception.* If the taxable sale of an article is a taxable use of such article under paragraph (c) of this section, the tax shall be computed on the price as determined under paragraph (c) of this section.

(4) *Special rule for tax-paid trailer and semitrailer.* In the case of a taxable sale of a trailer or semitrailer less than six months after a taxable sale of the article, the seller in the subsequent sale ("the subsequent seller") may claim a credit equal to the amount of tax previously paid by another person ("the previous taxpayer") under section 4051(a)(1) with respect to the prior taxable sale of the article. The credit for such tax will be allowed to the subsequent seller only if the form on which the credit is claimed is accompanied by a statement, signed by the subsequent seller, indicating the amount of the credit being claimed under this paragraph (a)(4) and stating that—

(i) The subsequent seller has not been repaid any portion of such tax by the previous taxpayer,

(ii) The subsequent seller has not provided the previous taxpayer with written consent to allow the previous taxpayer to claim a credit or refund of such tax under section 6416 (a), and

(iii) The subsequent seller has records (*e.g.* invoices) substantiating the amount of tax paid by the previous taxpayer with respect to the prior taxable sale of such article.

In no case shall the amount of the credit allowable under this paragraph (a)(4) with respect to an article exceed the tax liability of the subsequent seller with respect to the sale of such article.

(5) *No installment payments of tax.* If a lease or an installment sale (or another form of sale under which the sales price is paid in installments) is, or is deemed to be, a taxable sale under this section, then the liability for the entire tax arises at the time of the lease or installment sale. No portion of the tax is deferred by reason of the fact that the sales price is paid in installments.

(6) *Certificate.* A certificate signed by the purchaser, or an officer or employee authorized by the purchaser to sign the certificate, may be accepted by a seller in support of a nontaxable sale to the purchaser. If it is impracticable to furnish a separate certificate for each sale because of the frequency of sales to such purchaser, a certificate covering all orders between given dates (such period not to exceed 12 calendar quarters) will be acceptable. The purchaser may revoke the certificate by sending a written revocation to the seller. The certificate and proper records of invoices, orders, etc., relating to sales made pursuant to such certificate, must be retained by the seller as provided in section 6001 and the regulations thereunder. The certificate shall be substantially in the following form:

Exemption Certificate

I hereby certify that I am _____ (Title) of _____, (Name of purchaser) that I am authorized to execute this certificate, and that:

(Check appropriate line)

_____the article or articles specified in the accompanying order, or on the reverse side hereof, (or)

_____all orders placed by the purchaser for the period commencing _____ (Date) (period not to exceed 12 calendar quarters), are purchased either for resale or for lease on a long-term basis.

I have filed Form 637 and have received registration number _____.

I understand that the fraudulent use of this certificate to secure exemption will subject me and all parties making such fraudulent use to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

_____

(Signature)

_____

(Address)

(7) *Registration.* Section 4222 and the regulations thereunder shall apply to persons making sales which are not treated as taxable sales pursuant to paragraph (a)(2)(ii) of this section.

(b) *Tax treatment of leases*—(1) *Long-term lease.* For purposes of this section and § 145.4051–1, the leasing of an article on a long-term basis (as defined in paragraph (d)(6) of this section) will be deemed to be a sale of the article and will be deemed to be a taxable sale unless one of the exceptions contained in paragraph (a)(2) of this section applies. Thus, if a dealer purchases an article tax-free under an exception contained in paragraph (a)(2) of this section and then leases the article on a long-term basis, the leasing of the article will be treated as a taxable sale.

(2) *Short-term lease.* For purposes of this section and § 145.4051–1, the leasing of an article on a short-term basis (as defined in paragraph (d)(6) of this section) will be deemed to be a taxable use of such article under paragraph (c) of this section and will be deemed to be a taxable sale unless one of the exceptions contained in paragraph (a)(2) of this section applies.

(3) *Computation of tax*—(i) *Long-term lease by manufacturer, producer, or importer.* When a manufacturer, producer, or importer is the lessor of an article on a long-term basis (as defined in paragraph (d)(6) of this section) and such lease is deemed to be a taxable sale under paragraph (b)(1) of this section, the tax shall be computed on a presumptive retail sales price as determined under paragraph (d)(4)(i) of this section. The manufacturer, producer, or importer shall be liable for the tax as if the article were sold at retail by such manufacturer, importer, or retailer.

(ii) *Long-term lease by persons other than manufacturer, producer, or importer.* When a person other than a manufacturer, producer, or importer is the lessor of an article on a long-term basis (as defined in paragraph (d)(6) of this section) and such lease is deemed to be a taxable sale under paragraph (b)(1) of this section, the tax shall be computed on a presumptive retail sales price as determined under paragraph (d)(5)(i) of this section. Such person shall be liable for the tax as if the article were sold at retail by such person.

* * * * *

(c) *Use treated as a sale.* * * *

(5) *Computation of tax*—(i) * * *

(iii) In the case of any short-term lease (as defined in paragraph (d)(6) of this section) by any person other than a manufacturer, producer, or importer (or related person as defined in paragraph (d)(2)(ii) of this section) of an article that is deemed to be a taxable use of such article under paragraph (b)(2) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(A) The price (as determined under paragraph (d) of this section) at which such article was sold to the lessor plus the cost of any parts and accessories installed by the lessor (or an agent of the lessor) on such article before the first use or lease by the lessor, plus

(B) The product of the sum described in paragraph (c)(5)(iii)(A) of this section and the presumed markup percentage (as defined in paragraph (d)(7) of this section).

* * * * *

(d) *Determination of price*—(1) *In general.* * * *

(2) *Presumptive retail sales price where tax paid by manufacturer, producer, or importer*—(i) *In general.* In the case of a taxable sale (other than a taxable sale described in paragraph (b)(1) of this section) where a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price equal to the sum of—

(A) The price that would (but for this paragraph (d)(2)) be determined under this paragraph (d), and

(B) The product of the price determined under paragraph (d)(2)(i)(A) of this section and the presumed markup percentage (as defined in paragraph (d)(7) of this section).

(ii) *Related person defined*—(A) *In general.* Except as provided in paragraph (d)(2)(ii)(B) of this section, the term "related person" means any person that is a member of the same controlled group (within the meaning of section 5061(e)(3)) as the manufacturer, producer, or importer.

(B) *Exception for permanent retail establishment.* A person shall not be treated as a related person with respect to the sale of any article if—

(*1*) Such person sells the article through a permanent retail establishment in the normal course of business of being a retailer, and

(*2*) Such person has records (*e.g.*, invoices) that substantiate that the article was sold for a price that included a markup equal to or greater than the presumed markup percentage (as defined in paragraph (d)(7) of this section).

(3) *Retail sales price where tax paid by person other than a manufacturer, producer, importer, or related person.*—(i) *In general.* In the case of a taxable sale (other than a taxable sale defined in paragraph (b)(1) of this section) where a person other than a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price determined under paragraph (d)(1) of this section.

(ii) *Exception.* When a person other than a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price determined under paragraph (d)(2)(i) of this section if—

(A) Such person does not perform any significant activities relating to the processing of the sale of an article,

(B) The principal purpose for processing the sale through such person is to avoid or evade the presumed markup under paragraph (d)(2)(i)(B) of this section, and

(C) Such person does not have records (*e.g.*, invoices) substantiating that the article was sold for a price that included a markup equal to or greater than the presumed markup percentage as defined in paragraph (d)(7) of this section.

(4) *Presumptive retail sales price in the case of a lease by a manufacturer, producer, or importer.* In the case of any long-term lease (as defined in paragraph (d)(6) of this section) by a manufacturer, producer, importer, or a related person (as defined in paragraph (d)(2)(ii) of this section) of an article that is deemed to be a taxable sale of such article under paragraph (b)(1) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(i) A constructive sales price established by the Commissioner based on the price at which such article would be sold by a manufacturer, producer, or importer in a sale other than a taxable sale (*e.g.*, a sale to which the exceptions contained in paragraph (a)(2)(ii) of this section applies) on the date the lease is made, and

(ii) The product of the constructive sales price referred to in paragraph

(d)(4)(i) of this section and the presumed markup percentage as defined in paragraph (d)(7) of this section.

(5) *Presumptive retail sales price in the case of a long-term lease by any other person.* In the case of any long-term lease (as defined in paragraph (d)(6) of this section) of an article in which any person other than a manufacturer, producer, or importer (or related person as defined in paragraph (d)(2)(ii) of this section) is the lessor and the long-term lease is deemed to be a taxable sale of such article under paragraph (b)(1) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(i) The price (as determined under this paragraph (d)) at which such article was sold to the lessor plus the cost of any parts and accessories installed by the lessor (or an agent of the lessor) on such article before the first use by the lessee or leased in connection with such long-term lease, and

(ii) The product of the sum described in paragraph (d)(5)(i) of this section and the presumed markup percentage as defined in paragraph (d)(7) of this section.

(6) *Long-term and short-term lease defined.* For purposes of this section, the term "long-term lease" means any lease with a term of one year or more. The term "short-term lease" means any lease with a term of less than one year. In determining a lease term, options to renew shall be taken into account. In addition, two or more successive leases that are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar article, shall be treated as one lease.

(7) *Presumed markup percentage*—(i) *In general.* Except as provided in paragraph (d)(7)(ii) of this section, for purposes of this section the term "presumed markup percentage" shall be four percent.

(ii) *Exceptions.* For purposes of this section the "presumed markup percentage" for trailers, semitrailers, and remanufactured automobile truck chassis and bodies and tractors shall be zero percent. For purposes of this section an article is a remanufactured article if—

(A) The refurbishing, renovation, or repair of the article causes it to be subject to the tax imposed by section 4051, and

(B) Before remanufacture, such article was previously subject to the tax imposed by section 4051 (or section 4061 prior to its repeal).

* * * * *

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). M manufactures trucks that are taxable under section 4051. On July 11, 1988, D, a corporation that is a dealer, purchases one truck from M for $50,000. M does not own any stock in D. Prior to this transaction, D gave M a certificate that meets the specifications detailed in paragraph (a)(6) of this section. The certificate states that the truck will be resold or leased on a long-term basis. M's sale to D is not a taxable sale of the truck (within the meaning of paragraph (a)(2) of this section). On July 20, 1988, D resells the truck to a purchaser, P, for $52,000. The additional $2,000 includes the dealer's mark-up, costs of transporting the truck from M to D, and overhead. No parts or accessories were added to the truck. P did not give D a certificate and did not have an agreement with D under which all vehicles purchased were to be resold. The sale of the truck by D to P is a taxable sale within the meaning of paragraph (a)(3) of this section. Therefore, D has a tax liability of $6,240 (12%×$52,000).

Example (2). Assume the same facts as in example (1) except that M owns 60 percent of D's stock. D and M are members of the same controlled group (within the meaning of section 5061(e)(3)). Therefore, D is a related person under paragraph (d)(2)(ii)(A) of this section. On July 20, 1988, D sells the truck to P for $51,000. D does not have records substantiating that the truck was sold for a price that included a markup equal to or greater than the presumed markup percentage. The tax on the sale of the truck to P is determined under paragraph (d)(2)(i) of this section. Therefore, D has a tax liability of $6,240 (12%×[$50,000+($50,000×4%)]).

Example (3). Assume the same facts as in example (1) except that D does not perform any significant activities relating to the sale. Assume further that the principal purpose for processing the sale through D is to avoid the presumed markup and that D did not sell the truck for a price that included a markup equal to or greater than the presumed markup percentage. D, however, is designated the seller of the truck on the invoice. Pursuant to paragraph (d)(3)(ii) of this section, the price of the truck shall be computed on a price determined under paragraph (d)(2)(i). Therefore, D, the taxpayer, has a tax liability of $6,240 [12%×($50,000+($50,000×4%))].

Example (4). Assume the same facts as in example (1) except that on July 20, 1988, D leases the truck for a two-year period (*i.e.*, on a long-term basis) to L, a lessee. D's leasing of the truck to L is treated as a taxable sale under paragraph (b)(1) of this section and the tax is computed on the price as determined under paragraph (d)(5)(i) of this section. D has a tax liability of $6,240 [12%×($50,000+($50,000×4%))].

Example (5). Assume the same facts as in example (1) except that on July 20, 1988, D leases the truck to L for a six-month period (*i.e.*, a short-term lease). The lease is treated as a use under paragraph (b)(2) of this section. The tax is computed on the price as determined under paragraph (c)(5) of this section. D has a tax liability of $6,240 [12%×($50,000+($50,000×4%))].

Example (6). Assume the same facts as in example (1) except that D does not give M a certificate. The sale by M to D is a taxable sale of the truck under paragraph (a)(2) of this section. M's tax liability is $6,240 [12%×($50,000+($50,000×4%))]. On July 20, 1988, D leases the truck to L, a lessee. The lease has a two-year term. Since the lease to L occurred after a taxable sale of the truck, paragraph (b)(1) of this section does not apply, and the lease is not treated as a taxable sale under this section.

Example (7). M manufactures trucks that are taxable under section 4051. On July 11, 1988, M leases a truck to a lessee, L. The lease has a two-year term. The lease is treated as a taxable sale under paragraph (b)(1) of this section and the tax is computed on the price as determined under paragraph (d)(4)(i) of this section. The constructive sales price established by the Commissioner, pursuant to paragraph (d)(4)(i) of this section, is $50,000. M has a tax liability of $6,240 [12%×($50,000+($50,000×4%))].

Example (8). Assume the same facts as in example (7) except that the lease has a six-month term. The lease is treated as a taxable use under paragraph (b)(2) of this section and the tax is computed under paragraph (c)(5) of this section. The constructive sales price established by the Commissioner, pursuant to paragraph (c)(5)(i) of this section, is $52,000. M has a tax liability of $6,240(12%×$52,000).

Example (9). M manutactures truck trailers and semitrailers that are taxable under section 4051. On July 5, 1988, D, a dealer, purchases a trailer from M for $10,000. Prior to this transaction, D did not give M a certificate and D did not have an agreement with M to resell all articles purchased. The sale by M to D is a taxable sale of the trailer under paragraph (a)(2) of this section. M has a tax liability of $1,200(12%×$10,000+($10,000×0%)).

Example (10). Assume the same facts as in example (9) except that on July 12, 1988, D resells the trailer to P, a purchaser, for $10,500 (the additional $500 includes the dealer's markup, costs of transporting the trailer from M to D, and overhead). P did not give D a certificate and P did not have an agreement with D that stipulates that all articles purchased were to be leased on a long-term basis or resold. The sale of the trailer by D to P is a taxable sale within the meaning of paragraph (a)(3) of this section. Therefore, D has a tax liability of $1,260(12%×$10,500). D, however, may file for a credit of $1,200 under section 6402 provided that the requirements of paragraph (a)(4) of this section are met.

* * * * *

(g) *Effective date*—(1) *In general.* Except as provided below, the provisions of this section shall be effective for articles sold or leased on or after April 1, 1983.

(2) *Certain sales made prior to November 12, 1985.* If a sale to a lessor before November 12, 1985, was not taxable under § 145.4052–1 of the temporary regulations contained in 26 CFR Part 145 revised as of April 1, 1983, (the "prior regulations") and it was so treated by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the article under the prior regulations will be treated as a taxable sale for purposes

of this section. The tax on such subsequent sale will be based on a price determined under paragraph (d) of this section. For example, if an article was sold to a purchaser who intended to lease such article long-term, the sale would not have been taxable under the prior regulations even though the seller did not receive a certificate of the purchaser's intent to lease the vehicle. If such a sale was treated as nontaxable by the parties, and the purchaser leases it long-term on or after October 1, 1987, the lease will be treated as a taxable sale of the article. The tax is to be computed under paragraph (b)(3)(ii) of this section and the price will be computed under paragraph (d)(5).

(3) *Certain sales made after November 11, 1985, and before October 1, 1987*—(i) *Sales not treated as taxable by purchaser and seller.* If a sale to a purchaser after November 11, 1985, and before October 1, 1987, was not treated as taxable by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the article under the temporary regulations published in the September 13, 1985, issue of the **Federal Register** (50 FR 37350) ("the interim regulations") will be treated as a taxable sale for purposes of this section. The tax on a sale or lease after September 30, 1987, will be based on a price determined under paragraph (d) of this section. For example, if a vehicle was sold on January 3, 1987, to a purchaser who intended to resell the article and who was not in the business of leasing to any extent, the sale would not have been taxable under the interim regulations even though the seller did not receive a certificate indicating the purchaser's intent to resell the article. If such a sale was not treated as a taxable sale by the parties, and the purchaser resells the article, the resale will be treated as a taxable sale of the article under paragraph (a)(2) of this section.

(ii) *Sales treated as first retail sale by purchaser and seller.* If the sale of an article after November 11, 1985, and before October 1, 1987, was treated as a taxable sale by the parties and tax was paid with respect to the article under the interim regulations, the subsequent sale of the article by the purchaser will not be treated as a taxable sale under paragraph (a)(2) of this section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 19, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-10635 Filed 5-11-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Standards for Underground Coal Mines; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposal to revise existing safety standards for ventilation at underground coal mines. The hearings will be held in Pittsburgh, Pennsylvania; Lexington, Kentucky; Birmingham, Alabama; Evansville, Indiana; grand Junction, Colorado; and Charleston, West Virginia. Each hearing will cover the major issues raised by comments submitted in response to the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. Immediately before each hearing, and unallotted time will be made available to persons making late requests.

The public hearings will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

June 6, 1988, Pittsburgh, Pennsylvania.
June 7, 1988, Lexington, Kentucky.
June 9, 1988, Birmingham, Alabama.
June 16, 1988, Evansville, Indiana.
June 20, 1988, Grand Junction, Colorado.
June 22, 1988, Charleston, West Virginia.

ADDRESSES: The hearings will be held at the following locations:

June 6, 1988, Ramada Inn, Airport, Ballrooms A&B, 1412 Beers School Road, Coraopolis, Pennsylvania 15108.

June 7, 1988, Lexington Hilton Inn, Keeneland Hall, 1938 Stanton Way, Lexington, Kentucky 40511.

June 9, 1988, Birmingham–Jefferson Civic Center, No. 1 Civic Center Plaza, 21st Street and 10th Avenue North, Birmingham, Alabama 35203.

June 16, 1988, Evansville Executive Inn, Green Convention Center, Indiana C Room, 600 Walnut Street, Evansville, Indiana 47708.

June 20, 1988, Grand Junction Holiday Inn, Grand Mesa Room, 755 Horizon Drive, Grand Junction, Colorado 81506.

June 22, 1988, Holiday Inn, Heart of Town-House Room, Corner of Washington and Broad Streets, Charleston, West Virginia 25301.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published proposed revisions to its existing safety standards in 30 CFR Part 75 for ventilation in underground coal mines (53 FR 2382). The written comment period for this proposed rule will end on May 27, 1988. In the comments to the proposed rule, MSHA received requests for public hearings.

The purpose of the public hearings is to receive relevant comment and respond to questions about the proposed rule. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearings for rebuttal statements. A verbatim transcript of each proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until July 22, 1988.

Issues

Commenters questioned many specific provisions contained in the proposal. However, some of the provisions raised issues of particular concern and are discussed below. MSHA will specifically address these issues at the public hearings and solicits comments on them in addition to any other aspects of the proposed rule.

A. Use of Belt Haulage Entry as Intake Air Course.

In the proposal, § 75.350 would allow belt haulage entires to be used as intake air courses to ventilate working faces, provided that an early warning fire detection system is used. The existing regulation allows MSHA's district manager to approve belt haulage entries to be used as intake air courses to ventilate a working face in mines opened prior to 1970. The proposal would allow such use of belt haulage entries at any mine, provided certain precautions are taken. MSHA solicits comments on the overall impact of this proposal.

B. Ventilation in Anthracite Mines.

Since publication of the proposed rule, MSHA has re-evaluated certain provisions in light of the Agency's field experience, and believes that the proposal may not appropriately address mining practices and conditions in anthracite mines. Due to the pitch of the coal seam, the mining conditions, mining equipment, and mining methods in anthracite coal mines vary dramatically from bituminous coal mines. The differences may, therefore, require that anthracite mines be addressed in a different manner than bituminous mines. Accordingly, MSHA solicits comments on whether certain provisions of the ventilation proposal, for example, escapeways, main mine fans, and weekly examinations, are appropriate for anthracite mines and, if not, what changes should be made. The Agency also solicits comment on whether there are additional issues which should be considered concerning ventilation in anthracite mines. The Agency intends to articulate a refinement of its position with respect to anthracite mines at the public hearings.

C. Travelway On Tailgate Side For Longwall Face.

The proposal includes a provision in § 75.383 which would generally require a travelway off the tailgate side of a longwall face for use by miners in the event of an emergency. At this stage in the rulemaking process, the Agency is particularly interested in comments concerning procedures that should be followed if a roof fall or other blockage in the tailgate impedes travel. The Agency is considering including a provision in the final rule which would require mining to cease until MSHA has been notified, appropriate evaluation of the area involved has occurred, and the operator has proposed a course of action that addresses either clean-up or mining past the fall. MSHA solicits comments on whether such procedures should include consultation with the miners' representatives and whether the procedures should be approved by the Agency. Comments are particularly invited on (1) procedures for addressing a roof fall in the tailgate; (2) how best to implement such procedures; and (3) the impact of these procedures.

D. Other Issues.

The proposal revises existing rules for escapeways and generally requires two escapeways ventilated with separate splits of intake air from each working section. As under the existing provisions, MSHA intends that the proposal would apply not only to areas where coal is being produced, but to all areas where miners are working underground. Specifically, this would include sections where face equipment is being installed or removed. MSHA solicits comments on this issue.

MSHA also requests comments on the presence and impact of silicone bearing products used in underground coal mines. The Agency is particularly interested in the poisoning effect of silicone bearing products on methane detection equipment or other instrumentation.

Date: May 9, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-10641 Filed 5-11-88; 8:45 am]
BILLING CODE 4510-43-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS JUNEAU (LPD-10) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval amphibious transport dock ship. The intended effect of this rule is to warn mariners in water where 72 COLREGS apply.

EFFECTIVE DATE: April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION:

Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JUNEAU (LPD-10) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead lights less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, Sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, Sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, Sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS JUNEAU	LPD-10							X	55

Date: April 22, 1988.

Approved:

H. Lawrence Garrett, III,

Under Secretary of the Navy.

[FR Doc. 88-10601 Filed 5-11-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 88-015]

Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of Special Local Regulation.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.304, for the annual Harvard-Yale rowing regatta for specific time periods between June 4, 1988 and June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

Drafting Information

The drafters of this notice are LT L. BROWN, project officer, First Coast Guard District Boating Safety Division, and CDR M.A. LEONE, project attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulations governing the 1988 running of the Harvard-Yale Regatta on the Thames River, New London, CT. The regulations, 33 CFR 100.304, will be in effect from 6:00 p.m. to 7:00 p.m. on June 4, 1988 and again from 10:00 a.m. to 1:00 p.m. on June 5, 1988. Combination crew races will occur on June 4, 1988 and the featured spectator event of freshman, junior varsity, and varsity races will be held during the above times on June 5, 1988. If inclement weather causes postponement of the crew races, the regulations will be in effect from 10:00 a.m. to 1:00 p.m. on June 6, 1988.

Dated: May 2, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88-10621 Filed 5-11-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD1-87-087]

Special Anchorage Area; Keansburg, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special anchorage area in the waters adjacent to the Town of Keansburg, New Jersey. This area will provide an anchorage well away from fairways where vessels less than 65 feet in length can safely remain unlighted at night. Raritan Bay is currently experiencing a resurgence of recreational boating during the summer months. There are no such anchorages currently available in the immediate area.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) A.J. DiNinno, Vessel Movement Officer, Captain of the Port, New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: On February 16, 1988 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (53 FR 4422). Interested persons were requested to submit written comments and no comments were received.

Drafting Information

The drafters of this notice are LTJG A.J. DiNinno, Project Officer, Captain of the Port, New York and CDR M.A. Leone, Project Attorney, First Coast Guard District Legal Office.

Discussion of Comments

As previously stated, no comments regarding the NPRM were received. The area being designated as a special anchorage lies wholly within Federal Anchorage 28 and as such does not change the use of the area. The creation of a separate area for smaller vessels to anchor provides an added measure of safety. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Environmental Impact

These proposed regulations do not alter the use of this area in any way. It has been and will continue to be a place for vessels to anchor.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, thus a full regulatory evaluation is unnecessary. Establishment of this proposed special anchorage area will not require dredging or result in increased cost to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In Section 110.60, one new paragraph (z) is added to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(z) *Point Comfort at Keansburg, New Jersey.* This special anchorage is adjacent to the amusement pier at Point Comfort on Raritan Bay and is bounded as follows: beginning on the Keansburg shore at latitude 40°27'19" North longitude 74°08'25" West; to latitude 40°27'38" North longitude 74°08'52" West; to latitude 40°27'52" North longitude 74°08'32" West; to latitude 40°27'50" North longitude 74°07'45" West; to latitude 40°27'14" North longtitude 74°07'46" West; and thence returning westward along the shoreline to the point of origin.

Dated: April 18, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88–10618 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD 1–88–009]

Temporary Drawbridge Operation Regulations; Shark River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of New Jersey Department of Transportation with the concurrence of New Jersey Transit Railroad Operations, the Coast Guard is issuing temporary regulations governing the draws of Route 71 bridge, mile 0.8, the railroad bridge, mile 0.9, and the Route 35 bridge, mile 0.9, all at Avon, New Jersey, by permitting the number of openings to be limited from 7 a.m. to 9 a.m. and from 3 p.m. to 7 p.m. Monday through Friday, and from 9 a.m. to 9 p.m. on Saturdays, Sundays and federal holidays. The opening of the bridges may be delayed not more than 10 minutes after the signal to open is given for the passing of a scheduled train or bunching of commercial vessels. This temporary change is being made because periods of peak vehicular traffic have increased due to the Ocean Avenue bridge reconstruction and diversion of same to the Route 71 and Route 35 bridges. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations are effective for the period April 15, 1988 through October 31, 1988.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District at (212) 668–7994.

SUPPLEMENTARY INFORMATION: On April 15, 1988, the Coast Guard published a proposed temporary rule (53 FR 12535) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as a Public Notice 1–666 dated April 5, 1988. In each notice interested persons were given until April 18 and April 14, 1988, respectively, to submit comments.

Drafting Information

The drafters of this notice are Jose M. Arca Jr., project officer, and Cdr. R. B. Ellard, project attorney.

Discussion of Comments

No comments were received in response to the Notice of Proposed Rulemaking or Public Notice 1–666 and no changes have been made to the proposed rule.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These temporary changes in the regulations will not prevent mariners from transiting the bridges when needed but only require advance planning. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations (CFR) is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.751 is amended by suspending for the period April 15 through October 31, 1988, paragraph (b) and adding a new paragraph (d) effective for the period April 15 through October 31, 1988, to read as follows:

§ 117.751 Shark River.

* * * * *

(d) From April 15 through October 31, 1988, the draws shall open on signal; except that from 7 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Mondays through Fridays, except federal holidays and from 9 a.m. to 9 p.m. on Saturdays, Sundays and federal holidays, the draws need be opened only on the hour and half hour for waiting vessels. The opening of the draws may be delayed not more than 10 minutes after the signal to open is given to facilitate passage of scheduled trains or bunching of commercial vessels.

* * * * *

Dated: May 5, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88–10619 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Active Military Service Certified as Such Under Section 401 of Pub. L. 95–202

AGENCY: Veterans Administration.

ACTION: Final regulatory amendment.

SUMMARY: The Veterans Administration (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from a recent decision of the Secretary of the Air Force that the service of members of the group known as the American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941 to August 15, 1945, constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by the VA. The effect of this action is to confer veteran status for VA benefit purposes on former members of that group who were discharged under honorable conditions.

EFFECTIVE DATE: This amendment is effective January 19, 1988, the date that the Secretary of the Air Force held that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Robert M. White (211B), Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Pursuant to 38 CFR 1.12(b) the VA finds that prior publication of this change for public notice and comment is impracticable and unnecessary. The VA has no discretion in this matter. The decision of the Secretary of the Air Force concerning active duty status is binding on the VA. Consequently, a proposed notice will not be published. For this reason, this change is also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it does not come within the term "rule" as defined in that Act.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this final regulatory amendment change is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is not affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: April 15, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, *Adjudication,* is amended by adding paragraph § 3.7(x)(15) to read as follows:

§ 3.7 Persons included.

* * * * *

(x) * * *

(15) American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941, to August 15, 1945.

Authority: Pub. L. 95–202, sec. 401.

[FR Doc. 88–10628 Filed 5–11–88; 8:45 am]

BILLING CODE 8320–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

[FPMR Amendment G–85]

Submission of Paid Freight Bills/Invoices, Commercial Bills of Lading, and Supporting Documentation Covering Transportation Services Under Cost-Reimbursement Contracts

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) amends the Federal Property Management Regulations by requiring agencies to ensure that contractors, doing business with the United States Government under a cost-reimbursement contract (CRC), submit paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit. Some certifying and paying offices are unaware that contractors under a CRC are required to submit commercial bills of lading to GSA for audit. This rule clarifies GSA's audit function and establishes uniform procedures for submission of paid freight bills/invoices, commercial bills of lading, and supporting documentation by contractors under a CRC.

EFFECTIVE DATE: May 12, 1988.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, (commercial 202–786–3065) or (FTS 786–3065).

SUPPLEMENTARY INFORMATION: A proposed rulemaking was published in the **Federal Register** on July 5, 1985 (50 FR 27625), inviting comments for 30 days ending August 5, 1985. The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and FIRMR 201–45.6.

Discussion of Major Comments, Suggestions, and Our Determinations and Actions Taken

There were three respondents: A Federal agency, a carrier association, and a Government contractor.

All three respondents contended that requiring contractors under a cost-reimbursement contract (CRC) to submit paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit would increase administrative costs and duplicate the audit and review already done by contracting officers. However, contracting officers have neither the authority nor the resources to perform the technical audit of transportation bills, a function which has resided with the Office of Transportation Audits since it was transferred from the General Accounting Office to GSA in 1975. For that reason, this rule will not duplicate nor increase any administrative costs.

The Federal agency noted that the Federal Acquisition Regulations (FAR) do not require contractors under a CRC to submit paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit. GSA's Office of Federal Acquisition and Regulatory Policy has confirmed that this is true. We have, therefore, withheld publication of this final rule until now so that a companion revision to the FAR, requiring submission of paid freight bills/invoices, commercial bills of lading, and supporting documentation to GSA for audit, can be prepared and staffed. Those actions have been completed, and a companion revision to the FAR will be published shortly.

List of Subjects in 41 CFR Part 101–41

Accounting, Claims, Freight, Freight forwarders, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by adding the following entry:

101–41.807–4 Submission of paid freight bills/invoices, commercial bills of lading, and supporting documentation covering transportation services by contractors under a cost-reimbursement contract.

Subpart 101–41.8—Transportation Disbursement Procedures

3. Section 101–41.807–4 is added to read as follows:

§ 101–41.807–4 Submission of paid freight bills/invoices, commercial bills of lading, and supporting documentation covering transportation services by contractors under a cost-reimbursement contract.

(a) Agencies shall ensure that legible copies of paid freight bills/invoices, commercial bills of lading (CBL's), and supporting documentation for transportation services, for the account of and on which the United States will assume freight charges that were paid by a Federal agency's contractors under a cost-reimbursement contract and their first-tier subcontractors, under a cost-reimbursement contract, are submitted to GSA for audit.

(b) Agencies shall ensure that each prime contractor forwards legible copies of paid freight bills/invoices, CBL's, and supporting documentation as soon as possible following the end of the month, in one package to the General Services Administration, (FWAA/C), 18th and F Streets NW., Washington, DC 20405. The shipment shall include the required documents for all first-tier subcontractors under a cost-reimbursement subcontract. If, however, the inclusion of the transportation documents for any such subcontractors in the shipment is not practicable, such documents are to be transmitted in a separate package.

(c) Agencies shall ensure that any original transportation bills or other documents requested by GSA be forwarded promptly by the contractor to GSA. The agency shall ensure that the contractor stamp or write the name of the contracting agency on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the sender shall accompany each shipment of transportation documents. The copy, duly signed and acknowledging receipt of the shipment, will be returned by GSA. The statement should show:

(1) The name and address of the prime contractor;

(2) The contract symbol and number;

(3) The name and address of the field office or headquarters office administering the contract;

(4) The total number of bills submitted; and

(5) A listing of the respective amounts paid, or in lieu of such listing, an adding machine tape of the amounts paid showing the contractor's voucher or check numbers.

Dated: March 2, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–10652 Filed 5–11–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Policy Regarding Harvest of Migratory Birds in Alaska During the Closed Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final policy statement.

SUMMARY: The Fish and Wildlife Service published in the December 31, 1987, **Federal Register** (52 FR 49449) a proposal on policies and actions with regard to subsistence taking of migratory birds in Alaska. Attention was focused on taking during the closed season provided by the 1918 Migratory Bird Treaty Act (Treaty Act). The public comment period on the proposal closed on March 31, 1988. The Service received approximately 100 written comments and held numerous meetings with subsistence users and conservation groups throughout the state.

After carefully considering public response, the Service has adopted a final policy. The policy is a statement about the priorities the Service will follow in Alaska to protect waterfowl during the closed season. It concentrates enforcement efforts on violations that have the most serious impacts on the resource and focuses special attention on the protection of four diminished populations of geese: Cackling Canada geese, emperor geese, Pacific white-fronted geese, and black brant. It also seeks to prevent the use of private and charter aircraft to assist in hunting. As a second level of priority, the policy gives attention to protecting other species of waterfowl during nesting, brood-rearing, and flightless periods. The policy states that limited harvest of migratory birds for food in unforeseen emergency situations will not be prosecuted.

DATES: The Service's policy in Alaska for enforcement of the closed season under the Treaty Act became effective on April 22, 1988. The policy will remain in force until modified or rescinded.

ADDRESSES: Address correspondence to: Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. Telephone: (907) 786–3545.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Assistant Regional Director, Refuges and Wildlife, (907) 786–3545; or R. David Purinton, Assistant Regional Director, Division of Law Enforcement, (907) 786–3311.

SUPPLEMENTARY INFORMATION: In the December 31, 1987, **Federal Register**, the Service gave notice of, and invited public comments on, a proposed policy statement regarding subsistence taking of migratory birds in Alaska during the closed season as provided by the 1918 Treaty Act and implemented by regulations. The notice also terminated a proposed rulemaking announced to the public on May 19, 1986, (51 FR 18349) to permit and regulate subsistence hunting for migratory birds in Alaska. The rulemaking was halted by an October 9, 1987, opinion from the U.S. Court of Appeals for the Ninth Circuit that any regulations for subsistence hunting promulgated pursuant to the 1978 Fish and Wildlife Improvement Act must be in accordance with the 1916 Convention between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Canadian Treaty) implemented by the Treaty Act. The Canadian Treaty specifically prohibits hunting for most migratory birds between March 10 and September 1. Finally, the notice indicated Service support for continuation of a Yukon-Kuskokwim Delta Goose Management Plan, a cooperative management agreement for the conservation of geese that nest primarily in western Alaska.

The December 31, 1987, notice stated that comments on the proposed policy should be received on or before February 29, 1988. Many requests were received to extend the comment period. Both written and verbal comments indicated a lack of understanding by much of the general public of the reasons for the policy and the manner in which it would be implemented. The comment period therefore was extended to March 31, 1988 (53 FR 6853). The Service used the extended comment period to provide additional information on the proposed policy and to obtain additional comments from the public, particularly from those residents of rural

Alaska who will be most affected by the policy.

Issuance by the Service of a law enforcement policy is not subject to the normal notice and comment procedures of the Administrative Procedures Act. However, the legal status of subsistence hunting in Alaska has for four years been the subject of litigation that has been confusing to the public. In light of this, and because of the great interest in the issue and need for understanding of the policy throughout the state, the Service believed that it would be beneficial in this instance to provide for public review of the proposed policy. Comments received are evaluated below.

Review of Public Comments

During the public comment period, the Service conducted over 50 meetings with subsistence users and conservation organizations throughout Alaska. Most of these meetings were in rural communities. Service personnel also participated in several radio and television interview programs on the proposed policy and newspaper coverage of the issue was widespread. Approximately 100 written comments were received, about 80 of which originated from within Alaska. Following are summaries of major areas of concern identified by the public and Service responses to those concerns.

1. *Statewide application of the policy to all waterfowl.* A number of comments concerned the broad application of the policy statewide, including waterfowl (ducks, geese, and swans) other than the four species of Arctic nesting geese covered by the Yukon-Kuskokwim Delta Goose Management Plan. "Statewide policy * * * should be focused on specific bird populations where biological problems can be documented (e.g., Yukon-Kuskokwim Delta), hunting incidents which are abusive or blatant deviations from normal hunting practices in an area, and cases where large, wasteful harvests are found." "* * * the Service must recognize that in regions other than the Yukon-Kuskokwim Delta, subsistence hunters do not perceive any decline in the availability of waterfowl resources."

There were, however, some comments that the emphasis of the proposed policy on the four Arctic nesting geese with identified population declines could lead to overlooking problems with other waterfowl. "We are concerned that emphasis on geese may imply that other regulations will be disregarded when a comprehensive policy on migratory bird hunting for all of Alaska is needed. The policy should be carefully redrafted to make this clear."

Response. The final policy applies throughout Alaska and retains a provision that gives attention to the protection of waterfowl in general during the nesting, brood-rearing, and flightless periods. The Service believes that this is necessary for responsible management not only of low populations of geese, but of other waterfowl during the most vulnerable period of their life cycle. This emphasizes preventative maintenance so that other populations will not decline like the four species of Arctic nesting geese. The policy is clear that primary law enforcement emphasis will be directed toward the four species of geese, and will only secondarily be directed toward waterfowl in general.

2. *Policy lacks clear definitions on levels of enforcement and emergency situations.* There were many comments stating that the proposed enforcement policy was ambiguous, particularly in regard to the anticipated level and type of enforcement and emergency situations. "The policy document should contain a realistic description of the general level of enforcement that is intended in different areas of the state." "The FWS enforcement policy should also be more specific about the measures it proposes to use." "We would like for the Service to clearly spell out what 'emergency food' means." "Does the FWS policy mean that all the Hostess twinkies and wheat thins and canned milk have to empty before villagers can legally go out and hunt?"

Response. The Service intends to place its primary focus on protection of the four diminished populations of geese. On the Yukon-Kuskokwim Delta, attention will be directed to seeking compliance with the management principles identified in the Yukon-Kuskokwim Delta Goose Management Plan. In areas outside the Yukon-Kuskokwim Delta, the Service also will devote its efforts to protecting the four species of geese and to identifying other species and circumstances where additional protection is needed. In 1988, the focus of Service activities in regard to the policy will be on providing information to affected parties, not on mounting a greatly expanded enforcement effort.

Regarding "emergency situations," it is the Service's intent that this provision equate to the provision in Alaska's game regulations allowing an individual to take game for food during the closed season in case of "dire emergency." It is not intended to apply broadly to entire communities or regions.

3. *Increased educational efforts, community involvement, and cooperative management.* The need for more community involvement in management activities was stressed in a large number of comments on the proposed policy. Several people expressed the need for an increased educational program. "We encourage the Service to do all it can to educate the Alaskan Natives about the deleterious effects of harvesting the 'principal,' rather than the 'interest,' that can occur when the taking occurs in the spring." "Go to the village; tell the people what you are trying to accomplish."

Other comments expressed a need for development of cooperative management plans. It was felt that such plans would result in a more coordinated effort to rectify resource management concerns. The Alaska Federation of Natives "strongly recommends that a cooperative management agreement between FWS and the Native community or communities in a regional geographic area precede * * * developing an enforcement policy. Native egg-gatherers and hunters have a strong interest in ensuring the long-term conservation of migratory waterfowl." "Without such a cooperative effort, it will be difficult to gain cooperation in efforts to enhance populations of identified species."

Response. The Service concurs that there is a need for expanded informational efforts in rural Alaska regarding the status and management of waterfowl populations in general and of diminished populations of geese in particular. The Service has expanded its educational program both on and outside of the Yukon-Kuskokwim Delta and will continue to stress communication and information in the future to achieve compliance with the policy. The Service continues to view the Yukon-Kuskokwim Delta Goose Management Plan as an essential element in the conservation of the four geese. Similar cooperative efforts may be of benefit in other areas and circumstances. The Service does not believe that all such efforts need to result in formal, written agreements, but agrees that improved communications and common understanding are necessary for management of waterfowl resources in a manner that is supported by local rural residents.

4. *Ban on use of charter or private aircraft for hunting migratory birds.* Several comments were received relative to this provision of the proposed policy. Most of these comments supported the ban and, in several instances, recommended placing additional restrictions on aircraft and other methods of transportation. "The

Kwethluk IRA is very much opposed to use of chartered or private aircraft for the purpose of hunting, shipping or transportation of illegally caught migratory birds." "Using aircraft and ATVs to harvest in the closed season should be strictly prohibited." "Add a sentence which will make it clear that this policy does not apply to regular commercial flights to and from villages."

Two letters specifically opposed the ban on aircraft use. "Your proposal to prohibit the use of private or charter aircraft for purposes of hunting or transporting migratory birds during the closed season is perplexing. I am not aware of any particular abuse of spring and summer hunting with aircraft." "If the FWS wants to limit or restrict aircraft use, it should not use a 'subsistence' argument."

Response. Preventing use of private or charter aircraft for purposes of hunting migratory birds during the closed season is retained as a provision of the final policy. The Service does not believe that use of such aircraft constitutes a legitimate mode of access for subsistence hunting. Aircraft are known to be used for closed season hunting by residents of some urban areas and large regional service communities where sources of food are plentiful. In addition, use of aircraft in spring provides access to hunting areas that otherwise would be left undisturbed. The enforcement emphasis on preventing use of aircraft does not apply to the use of commercial flights that rural residents now use routinely to travel to and from their villages.

5. *Full enforcement of Migratory Bird Treaty Act closed season.* Several comments stated that the Service should strictly enforce the closed season provisions of the Treaty Act, allowing no hunting during the closed season. One group stated that it "is unconditionally opposed to all hunting (and/or trapping) of all species of migratory birds, or the taking of their eggs, during spring and summer." "To be complete, the policy must state clearly that the taking of migratory birds in Alaska during the period March 10 to September 1 is unlawful, and that customary and traditional uses of migratory birds during that period will not, without more, constitute an 'unforeseen emergency situation.' "

Response. With very limited exceptions, the hunting of migratory birds between March 10 and September 1 is illegal. However, the Service has discretion to apply the law in a reasonable way in consideration of resource needs and priorities. It is not required to act in a strict or inflexible manner. It is the Service's intent to provide protection to migratory birds by directing attention to the highest priority needs for protection. Under the Canadian Treaty, Indians can take scoters at any time for food and Eskimos and Indians can take auks, auklets, guillemots, murres, puffins, and their eggs at any time for food and clothing. In addition, federal regulations permit any person in Alaska to take snowy owls and cormorants at any time for food and clothing.

6. *Inadequate public involvement in developing the policy.* One of the most commonly expressed concerns about the proposed enforcement policy was the perceived lack of public involvement in the formulation of the policy and concerns about the notification process involved in soliciting comments on it. Examples of comments include: "In its headlong rush to promulgate the proposed policy by this spring, the Service has woefully neglected to work with the Native community." "It was only by accident that I heard a radio blurb in early February regarding this policy publication." "Many of our elders, not only from Toksook Bay, have made their concerns and comments before and none of them was incorporated into the plan."

Response. These comments reflect some of the early reaction to the proposed policy based on limited information and a fear that the initial February 29, 1988, closure of the public comment period would not allow adequate presentation of concerns. Subsequent to extending the comment period to March 31, 1988, the Service conducted numerous public meetings which appeared to greatly ameliorate this situation. The Service's mailing list for notices and information relating to development of the policy includes over 900 addresses, including three governmental and Native corporate entities in most villages in Alaska.

7. *Lack of data.* A number of respondents expressed concern about development of a closed season enforcement policy without adequate information on past and present levels of subsistence waterfowl hunting, regional differences in the relative health of specific waterfowl populations, and the effects of subsistence hunting on these populations. "We felt that there should be biological studies on numerical numbers and usage statewide." "To be consistent with our understanding of ANILCA, the FWS should first collect detailed biological data as a basis for decisions."

Response. The Service agrees with the need for improved information on the status and harvest of waterfowl populations throughout Alaska, but does not believe that lack of such data should preclude application of the policy on a statewide basis. Excellent data exist for some species and some areas. The Service will continue to obtain information needed for management of other species and other areas as funding and priorities allow.

8. *Impacts of the proposed policy on "traditional lifestyles."* Numerous comments were made related to the impact of the proposed closed season enforcement policy on the lives of rural residents. These comments were usually pointed to one of three areas: The cultural significance of spring and summer hunting and egg-gathering, the nutritional significance of these activities, or the economic impacts of curtailing such activities. "Waterfowl harvest has been an important nutritional and cultural resource to the Yup'ik people and other Alaska Native cultures for thousands of years." "Rural areas, and especially the Yukon-Kuskokwim Delta, have some of the lowest incomes in the state, and rely on subsistence-caught fish, game, marine mammals, and birds for a large part of their protein needs." Migratory birds provide an important food source for local residents throughout the entire March to September closed season, but especially during the spring months."

Response. The Service has recognized for many years that residents of certain remote areas in Alaska depend on waterfowl as an important source of food, especially in spring and early summer. Because of this, prohibitions on taking during the closed season generally have not been strictly enforced provided that the birds were taken in a non-wasteful manner and were used as food. Although the Service cannot legally permit the hunting of migratory birds during the closed season even for subsistence, the policy stresses protection of four populations of geese as a first priority and addresses the taking of other waterfowl as a second level priority during the nesting, brood rearing, and flightless periods. The Service does not believe that this will result in dramatic changes to traditional lifestyles in rural Alaska.

9. *Protocol to the United States/Canada migratory bird treaty.* A number of respondents identified the need to proceed with a protocol to amend the Canadian Treaty to allow for subsistence taking of waterfowl during the closed season. "A protocol amendment to the Canadian treaty to acknowledge Alaska Native traditional use of migratory birds is needed." "Why no mention of the intent to amend the restrictive Canadian Treaty to agree

with later treaties with USSR, Japan, and Mexico, to show that the US is trying to correct its mistake?"

Response. The Service supports a protocol amendment to the Canadian Treaty that contains provisions for subsistence hunting similar to those in the migratory bird treaty with the Soviet Union and the 1978 Fish and Wildlife Improvement Act. A protocol was signed in January 1979 but has not been ratified in the United States because of concerns raised about its effects. The Service began work with the Canadian Wildlife Service in 1983 to develop a joint United States/Canada agreement that would explain how each country would interpret and implement the protocol. A draft agreement has been developed but has not yet been approved by Canadian officials.

10. *Impacts to waterfowl populations not related to subsistence harvest.* Several letters identified factors other than subsistence harvest which are affecting the populations of migratory waterfowl, including sport hunting, loss of wintering habitat, and predation. These comments often suggested that the Service was doing little to evaluate the impact of these activities on bird populations and that control of these factors should be considered prior to (or in conjunction with) enforcement of the closed season in areas of subsistence harvest. "Other elements of this program such as habitat management and protection, predator control and management of sport harvest must also be considered. This cannot be limited to the breeding grounds and will require a comprehensive year-round plan for management of affected species." "One positive action you can do is raise the white fox pelts and lower the gulls population. Kill them off. The second is the growing number of farms which is robbing these birds of their food and resting grounds."

Response. The Service has for years been aware of factors other than subsistence harvest that affect populations of waterfowl throughout their ranges. Preservation and enhancement of habitat and control of sport hunting are major activities of the Service both in Alaska and in wintering areas. Study and control of contaminants and diseases receive particular attention in wintering areas. Comprehensive plans currently being developed for the four species of geese are scheduled for completion by December 1988. The effect of predation on geese is being actively studied on the Yukon-Kuskokwim Delta. This includes evaluation of experimental fox control programs on nesting success and production. The current effort to address subsistence harvest in Alaska is not occurring in isolation, but is part of an overall program to restore diminished populations of geese and to help prevent declines in other populations of waterfowl that nest in and migrate through the state.

11. *Nesting sanctuaries.* Several respondents identified the need to establish nesting sanctuaries in order to fully protect migratory birds. "We have continually advocated the identification of 'inviolate sanctuaries' carefully located to protect core populations of the four species of geese involved where violations of trespass by anyone during the critical nesting, resting, and molting period would be strictly enforced."

Response. The Service will begin discussions soon with local residents near selected goose nesting areas on the Yukon-Kuskokwim Delta to maximize production within zones established to minimize disturbance to geese. These zones could include any combination of elements such as experimental predator control, limited human access, and no harvest. The Service also is considering the reestablishment of geese on underutilized nesting habitats. Many of the potentially best management areas are private lands owned in whole or in part by Native village corporations. Establishment of the management areas generally will require cooperative agreements with local residents to assure the highest degree of compliance possible with the Yukon-Kuskokwim Delta Goose Management Plan. The Service does not believe that unilateral establishment of sanctuaries is feasible.

Need for Policy and Relation to Yukon-Kuskokwim Delta Goose Management Plan

The Treaty Act prohibits the taking of migratory birds except as permitted by regulations published by the Service. The Treaty Act further requires that the regulations must be consistent with the provision of the 1916 Canadian Treaty. Accordingly, the Service publishes regulations annually that establish open seasons and bag limits for migratory game birds within the September 1 to March 10 period provided by that treaty. Except in Alaska, the Service has always strictly enforced the prohibitions against taking migratory birds during closed seasons; that is, during those times of year outside the hunting seasons established in the annual hunting regulations.

The Service has recognized for many years that residents of certain rural areas in Alaska depend on waterfowl and some other migratory birds as customary and traditional sources of food, primarily in spring and early summer. Because of this long established dependence, the Service generally has exercised its discretion to not strictly enforce the closed season in these areas provided that any birds taken are taken in a non-wasteful manner and are used for food.

Historically, the taking of waterfowl and other migratory birds for subsistence purposes in Alaska does not appear to have had a significant adverse impact on the populations from which the birds were taken. In recent years, however, the levels of taking in Alaska and elsewhere, in combination with other factors such as nest predation by foxes, have caused drastic declines in some populations of birds. This has been particularly apparent in populations of four species of geese that nest primarily on the Yukon-Kuskokwim Delta: Cackling Canada Geese, emperor geese, Pacific white-fronted, geese, and black brant.

Since 1984, efforts to halt declines of the four populations of geese have been undertaken pursuant to a Yukon-Kuskokwim Delta Goose Management Plan renewed annually. The Service has viewed the plan as an effective mechanism in providing a basis for cooperative management of geese on the Yukon-Kuskokwim Delta and elsewhere. This cooperative management includes provisions to reduce sport harvest of these species and to reduce or minimize subsistence harvest that is not in accordance with the Treaty Act. In the future, the Service intends to enforce the Treaty Act with respect to closed season subsistence hunting in accordance with the enforcement policy described below. On the Yukon-Kuskokwim Delta, the Service's enforcement policy will be supported by a revised goose management plan. The annual renewal of the plan is an essential element in the conservation of the geese on their nesting grounds. It retains an established mechanism for communication with the subsistence hunters most affected by the policy and will encourage the cooperation needed to achieve population objectives incorporated into previous plans.

The Service recognizes that among subsistence users there is a wide range in the level of understanding of the impacts of spring and summer harvest of waterfowl and the need to reduce mortality, especially when populations become depressed. The Service will continue educational efforts to expand the understanding of this problem and will consider this factor in carrying out enforcement efforts on a statewide basis.

Closed Season Enforcement Policy in Alaska

Service enforcement efforts in Alaska during the closed season will be concentrated on violations that have the most serious impact on the resource. Special attention will be given to the protection of cackling Canada geese, emperor geese, Pacific white-fronted geese, and black brant. These species have suffered severe population declines in recent years and need special protection. In order to protect these geese, priority will be given to enforcement designed to support the following principles:

—No taking of cackling Canada or emperor geese at any time;

—No taking of Pacific white-fronted geese or black brant during the nesting, brood-rearing, and flightless periods;

—No taking the eggs of any of the above four species of geese; and

—No use of charter or private aircraft to assist in hunting.

As a second level of priority, the Service also will give attention to protecting other species of waterfowl from taking during nesting, brood-rearing, and flightless periods, including the taking of their eggs. Identification of circumstances warranting additional protection for migratory birds during the closed season will be based on the status of populations and will involve consultation with affected interests. Of greatest concern will be situations involving waste or harvest exceeding reasonable levels of need under existing circumstances.

The Service recognizes that unforeseen emergency situations can occur in rural Alaska where food is unavailable and no means of transportation or other opportunities exist to obtain food. Regardless of the prohibitions outlined above, the taking of migratory birds in such situations in limited numbers to provide emergency food will not be referred to the United States Attorney for prosecution.

Date: May 5, 1988.

Walter O. Stieglitz,

Regional Director, Alaska.

[FR Doc. 88-10625 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 38, 292, 293, and 382

[Docket Nos. RM88-4-000, RM88-5-000, and RM88-6-000]

Regulations Governing Independent Power Producers; Regulations Governing Bidding Programs; Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities

Issued May 6, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notices of proposed rulemakings; Notice of change in procedural schedule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is changing the dates for written comments, the public hearing, and replies to written comments for the Notices of Proposed Rulemaking (NOPRs) in the three captioned dockets, published in the **Federal Register** on March 22, 1988 (53 FR 9324, 9327, and 9331). The proposed rules are: (1) Regulations Governing Independent Power Producers, Docket No. RM88-4-000; (2) Regulations Governing Bidding Programs, Docket No. RM88-5-000; and (3) Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities, Docket No. RM88-6-000.

DATES: The date for filing written comments in Docket No. RM88-6-000 is changed to June 16, 1988. The date for filing written comments in Docket Nos. RM88-4-000 and RM88-5-000 is changed to July 18, 1988. The date for the public hearing on all three NOPRs is changed to July 21 and 22, 1988. Requests to participate in the public hearing must be submitted by July 8, 1988. The date for replies to written comments on all three NOPRs is changed to August 15, 1988.

ADDRESS: All filings should be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Notice of Change in Procedural Schedule

The Commission is changing the dates for written comments, the public hearing, and replies to written comments for the Notices of Proposed Rulemaking in the three captioned dockets, published in the **Federal Register** on March 22, 1988 (53 FR 9324, 9327, and 9331). The procedural schedule for the three Notices of Proposed Rulemaking is revised as follows:

—Written comments on Administrative Determination of Full Avoided Costs (Docket No. RM88-6-000) must be filed by June 16, 1988.
—Written comments on Independent Power Producers (Docket No. RM88-4-000) and Bidding (Docket No. RM88-5-000) must be filed by July 18, 1988.
—A public hearing on all three proposed rulemakings will be held on July 21 and 22, 1988.
—Requests to participate in the public hearing must be submitted by July 8, 1988.
—Replies to written comments in all three dockets must be filed by August 15, 1988.

By direction of the Commission. Commissioner Trabandt dissented in part with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Opinion of Commissioner Charles A. Trabandt, Dissenting in Part

I dissent in part because this order does not grant fully the joint motion. Numerous parties, including state PUCs, consumer groups, environmental groups, public power groups, and individual utilities, have joined to file on April 29, 1988, a petition styled as a Joint Motion for Enlargement of Time and Request for Notational Voting in the electric NOPR Docket Nos. RM88-4-000, RM88-5-000 and RM88-6-000. The joint petitioners request an additional thirty (30) days to respond to Docket No. RM88-6 (Avoided Cost), an extension until August 31, 1988, for comments on Docket Nos. RM88-5 (Bidding) and RM88-4 (IPP), and a rescheduling of the July 5, 1988, public conference. The additional time for Avoided Cost is needed, because of its complexity. The additional time for Bidding and IPP would parallel the time for comments on the Draft EIS, which will be issued on June 16 at the earliest. The July 5 public conference would require participants to travel on the Fourth of July Holiday.

Consistent with the position I took in my separate opinion in those dockets on the issues of administrative procedures for public comment and participation and compliance with NEPA, I want to record my support for the Joint Motion. I believe that the Joint Motion makes a persuasive case in the context of NEPA and well accepted notions of due process fairness for the modest extensions and rescheduling sought by the joint petitioners. Consequently, I would have preferred strongly that the Commission grant the Joint Motion without modification. The Commission's failure again to be responsive fully to the reasonable request of a broad spectrum of interested parties compounds further the mistakes made on the administrative procedures for public comment and participation in the original NOPRs.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88-10594 Filed 5-11-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[LR-17-86]

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the excise tax imposed on the first retail sale of heavy trucks, truck trailers and semitrailers, and tractors. The text of the temporary regulations also serves as the text for this Notice of Proposed Rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed on or before July 11, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-17-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (LR–17–86). Telephone 202–566–4336 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 145, Title 26 of the Code of Federal Regulations. The final regulations which are proposed to be based on the temporary regulations would amend Part 48 of Title 26 of the Code of Federal Regulations. The regulations provide guidance relating to the definition of the term "first retail sale" under section 4052(a)(1) of the Internal Revenue Code of 1986 (Code) as amended by section 505 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 97–424, 101 Stat. 258). The regulations also provide rules relating to the determination of the price of an article in the case of (1) a long-term lease and (2) a retail sale by a manufacturer, producer, or importer under section 4052(b) (3) and (4) of the Code as added by sections 505 and 506, respectively, of the Highway Revenue Act of 1987 (Title 5 of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 97–424, 101 Stat. 258). For the text of the temporary regulations see T.D. 8200 published in the Rules and Regulations portions of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Maurice B. Foley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–10634 Filed 5–11–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 88–010]

Safety Zone; Rhode Island Sound, Narragansett Bay, Providence River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a permanant safety zone in Rhode Island Sound, Narragansett Bay and the Providence River. This permanant safety zone will be in effect only while Liquefied Petroleum Gas (LPG) Vessels are anchored, transiting, transfering or moored in Rhode Island Sound, Narragansett Bay, or the Providence River and will alleviate the necessity of establishing Emergency Rules for each LPG Tank Vessel which enters these waters. This action is necessary to protect the public from potential hazards associated with the transport and transfer of Liquefied Petroleum Gas. The intended effect of this regulation is to protect the port and the resources therein from harm resulting from destruction or loss of an LPG vessel. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

DATES: Comments on this regulation must be received on or before June 27, 1988.

ADDRESS: Comments should be mailed to Captain Of The Port U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg., Providence, R.I. 02903–1790.

The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt. J.A. Gabrielson, USCG, C/O Captain Of The Port U.S. Coast Guard Marine Safety Office, John O. Pastore Fed. Bldg, Providence, R.I. 02903–1790, telephone (401) 528–5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice by (CGD1 88–010) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant J.A. Gabrielson, project officer for the Captain of the Port and Commander M.A. Leone, project attorney for the First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Captain of the Port Providence, R.I. is considering establishing a permanent safety zone in the vicinity of the Brenton Reef Light Tower, Narragansett Bay and the Providence River. This permanent safety zone will be in effect only while Liquefied Petroleum Gas Vessels are anchored, transiting, transfering or moored in Rhode Island Sound, Narragansett Bay, and the Providence River and will alleviate the necessity of continuously

establishing Emergency Rules for each Liquefied Petroleum Gas (LPG) Vessel which enters these waters. In 1987, twelve of these emergency Safety Zones were established. These safety zones are intended to protect the public from the potential hazards associated with the transport and transfer of Liquefied Petroleum Gas. The zones are in effect while the LPG vessels are: (1) At anchor at Brenton Reef; (2) Transiting Narragansett Bay and the Providence River; and (3) While moored to the LPG facility. This regulation is intended to protect the port and the resources therein from harm resulting from damage, destruction or loss of an LPG vessel. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is expected to be minimal, therefore, a full regulatory evaluation is unnecessary. The requirements of the proposed permanent safety zone are presently being implemented utilizing emergency rules which effect larger commercial vessel traffic.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.121 is added to read as follows:

§ 165.121 Safety Zone: Rhode Island Sound, Narragansett Bay, Providence River.

(a) *Location.* The following areas are established as safety zones:

(1) For Liquefied Petroleum Gas (LPG) vessels while at anchor in the waters of Rhode Island Sound; in position Latitude 41°25 N., Longitude 71°25 W., and position Latitude 41°25 N., Longitude 71°23 W., a Safety Zone with a radius of one-half mile around the LPG vessel.

(2) For Liquefied Petroleum Gas (LPG) vessels while transiting Narragansett Bay and the Providence River; a moving safety zone from a distance of two (2) miles ahead to one (1) mile astern to the limits of the navigable channel around the LPG vessel.

(3) For Liquefied Petroleum Gas (LPG) vessels while moored at the LPG Facility, Port of Providence; a Safety Zone within 50 feet around the vessel. No vessel shall moor within 400 feet from the LPG vessel. All vessels transiting the area are to proceed with caution to minimize the effects of wake around the LPG vessel.

(4) For Liquefied Petroleum Gas (LPG) vessels while moored with manifolds connected at the LPG Facility Port of Providence; a Safety Zone within a 100 foot radius around the shoreside manifold while connected. This is in addition to the requirements for LPG vessels while moored at the LPG Facility Port of Providence.

(b) The Captain of the Port Providence will notify the maritime community of periods during which this Safety Zone will be in effect by providing advance notice of scheduled arrivals and departures of LPG vessels via Marine Safety Information Radio Broadcast.

(c) *Regulations.* The general regulations governing Safety Zones contained in § 165.23 apply.

Dated: May 6, 1988.

D.S. Jensen,

Captain, U.S. Coast Guard, Captain of the Port Providence, R.I.

[FR Doc. 88–10623 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Increase in Rates Payable in the Educational Assistance Test Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed Regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent. The regulations dealing with these rates are adjusted accordingly.

DATES: Comments must be received on or before June 10, 1988. Comments will be available for public inspection until June 24, 1988. It is proposed to make this rate increase retroactively effective on October 1, 1987.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until June 24, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2092.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education and determined that these costs have increased 6 percent. This proposal adjusts 38 CFR 21.5820 and 21.5822 so that all rates which appear in them are based on an annual limit on educational assistance of $1654, and monthly payment of subsistence allowance for full-time students of $412.

It is proposed to make these increases effective October 1, 1987. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretive rules which

implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1987. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

The Veterans Administration (VA) and the Department of Defense have determined that these proposed amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that these proposed amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulations make adjustments required by law, and because they affect only rates payable to individuals. No regulatory, administrative, or paper-work burdens are imposed on any type of small entities.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 4, 1988.

Thomas K. Turnage,

Administrator.

Approved: April 13, 1988.

A. Lukeman,

Lieutenant General, USMC Deputy Assistant Secretary (Military Manpower and Personnel Policy).

38 CFR Part 21, *Vocational Rehabilitation and Education,* is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.5820, the introductory text of paragraph (b), paragraphs (b)(1)(ii) (A), (B), and (C), and paragraphs (b)(2)(ii) (A), (B), and (C) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of educaton assistance.* The amount of educational assistance may not exceed $1654 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $183.78 for a full-time student or by $91.89 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.12 for a full-time student or by $3.06 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by $.02 for a full-time student and decreased by $.01 for a part-time student; and

(Authority: 10 U.S.C. 2143)

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $183.78 for a full-time student or by $91.89 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.12 for a full-time student or by $3.06 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by $.02 for a full-time student and decreased by $.01 for a part-time student; and

(Authority: 10 U.S.C. 2143)

2. § 21.5822, paragraphs (b)(1) (i) and (ii) and (b)(2)(i) and (ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $412 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $206 per month.

(Authority: 10 U.S.C. 2144)

* * * * *

(2) * * *

(i) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $412 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) The VA shall determine the monthly rate of subsistance allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $206 per month by the number of the deceased veterans' dependents pursuing a course of instruction on that day.

(Authority: U.S.C. 2144)

* * * * *

[FR Doc. 88–10629 Filed 5–11–88; 8:45 am]

BILLING CODE 8320–01–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM88–2; Order No. 784]

Petition of Postal Service for Express Mail Rulemaking, 1988

AGENCY: Postal Rate Commission.

ACTION: Petition for rulemaking.

SUMMARY: On April 29, 1988, the Postal Service filed a petition requesting the Commission to initiate a rulemaking to amend the Commission's filing and procedural requirements as they relate to requests for Express Mail rate changes under circumstances specified in the Postal Service's filing. We have labeled this filing Docket No. RM88–2 for reference. In its filing the Postal Service proposes rule changes permitting expedited procedures for consideration of Postal Service requests for Express Mail rate changes between omnibus rate proceedings "only where the Postal Service is proposing the changes in response to changes in the expedited delivery market."

The Postal Service says the new procedures are for those situations in which the Postal Service wants to respond to a change initiated by competitors in the expedited delivery market. It proposes filing requirements including a description of the specific change in the market which it is seeking to meet, cost data showing that the proposed rates will recover at least Express Mail average per-piece attributable costs, and will not exceed the Express Mail rates set in the last omnibus rate proceeding.

The Postal Service proposes that such rate-change filings would be served on interested persons at the same time they are submitted to the Commission. The Postal Service proposes automatic intervention be afforded these persons. The proposal also calls for accelerated hearings under an expedited schedule. The Postal Service filed the text of its proposed procedural rules and supporting testimony with its petition.

DATES: Any person wishing to comment on the desirability of instituting a rulemaking in response to the Postal Service's April 29, 1988, petition may do so within 30 days of the publication of this Notice and Order in the **Federal Register.** The Commission has scheduled a conference on June 21, 1988, to discuss further proceedings with regard to the Postal Service's petition.

ADDRESSES: Persons wishing a copy of the Postal Service's filing can contact Grayson Poats, Assistant General Counsel, Postal Service 475 L'Enfant Plaza, SW., Room 6436, Washington, DC 20260–1141 (telephone: 202/268–2981). The filing is also available for public inspection at the Commission offices, 1333 H Street, NW., Suite 300, Washington, DC.

The Secretary of the Commission is perparing a service list for this filing. Any person wishing to be included on it should contact Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268.

FOR FURTHER INFORMATION CONTACT: Charles L. Clapp, (202) 789–6840.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc, III.

Commission Notice and Order Concerning Filing of Petition of Postal Service for Initiation of Rulemaking to Amend Procedural Requirements for Changes in Express Mail Rates

Issued: May 6, 1988.

The Commission orders:

(A) Comments to the Postal Service's petition are due 30 days after the publication of this Notice and Order in the **Federal Register.**

(B) A conference regarding the Postal Service's petition will be held on June 21, 1988, at 10:00 a.m. in the Commission's hearing room.

(C) Persons wishing to have their names on the Commission's service list are to notify the Secretary of the Commission.

(D) The Secretary shall publish this Notice and Order in the **Federal Register.**

Charles L. Clapp,

Secretary.

By the Commission.

[FR Doc. 88–10464 Filed 5–11–88; 8:45 am]

BILLING CODE 7715-01-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation (NSF).

ACTION: Proposed rulemaking.

SUMMARY: Because of recommendations adopted at consultative meetings, NSF is proposing to amend its regulations at 45 CFR Part 670 implementing the Antarctic Conservation Act of 1978 to designate additional specially protected areas and sites of special scientific interest in Antarctica.

DATE: Written comments will be considered which are received on or before July 11, 1988.

ADDRESSES: Comments should be sent to Dr. Anton L. Inderbitzen, Polar Coordination and Information Section Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Anton L. Inderbitzen at the address above or on 202–357–7817.

SUPPLEMENTARY INFORMATION: Since these regulations were issued in 1979, several consultative meetings have been held in accordance with Article IX of the Antarctic Treaty. Recommendations have been adopted which modified and/or extended the management plans and duration of earlier recommendations for the establishment of various sites of special scientific interest. New sites of special scientific interest were also recommended. In addition, Recommendations XIII–10, 11, and 12, identified three new specially protected areas and Recommendation XIII–13 provided for extensions of boundaries for the specially protected area of Cape Hallett, Victoria Land.

The United States representatives to the meeting supported these recommendations of which not all are in force but all have been approved by the United States. The purpose of this regulation is to implement them with respect to the activities of United States citizens and nationals in Antarctica as authorized by section 6 of the Antarctic Conservation Act of 1978. The amendments of 45 CFR 670.30 and 670.34 thus reflect the original Agreed Measures and Recommendation VIII–3 as well as subsequent recommendations pertaining to specially protected areas and sites of special scientific interest. In addition to revisions listing new areas and sites, it is proposed to revise the introductory sections of sections 45 CFR 670.30 and 670.34 to reflect the broader basis of the designations.

Section 670.34(d) is proposed as the management plans contained in the recommendations identifying sites of special scientific interest contain expiration dates which are frequently extended by the Consultative Parties. For the purposes of these regulations a site of special scientific interest and its accompanying management plan shall remain in effect until deleted from the regulations. In general, designation of a site of special scientific interest pursuant to these regulations shall comport with the expiration date contained in the management plan adopted with it, as extended by the Consultative Parties.

This notice has been coordinated with the Department of State.

This is not a major rule as defined by Executive Order 12291. This regulation will not have a significant impact on a substantial number of small businesses. No new information collection requirements are imposed by the proposed amendment.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Therefore, it is proposed that 45 CFR part 670 be amended as set forth below:

PART 670—[AMENDED]

1. The authority citation for Part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 81–507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95–541, 92 Stat. 2048 (16 U.S.C. 2401).

2. Section 670.30 is amended by adding paragraphs (o), (p), and (q) as follows:

§ 670.30 Designation of specially protected areas.

* * * * *

(o) North Coronation Island, South Orkney Islands.

(p) Lagotellerie Island, Marguerite Bay.

(q) New College Valley, Caughley Beach, Cape Bird, Ross Island.

* * * * *

3. Section 670.34 is amended by revising paragraphs (a) (1) and (4) and by adding paragraphs (a)(5), (6), (7), (8),

(9), (10), and (11) and (d) to read as follows:

§ 670.34 Designation of sites of specific scientific interest and management plans for those sites.

* * * * *

(a) Sites of Special Scientific Interest Requiring a Permit for Entry. (1) Cape Royds on Ross Island; Cape Crozier on Ross Island; Hasewell Island; Admiralty Bay, King George Island; Caughley Beach, Cape Bird, Ross Island; and Cierva Point and offshore Islands, Danco Coast. Management Plan: Entry by foot only for scientific purposes will be authorized. Pedestrians may not move through areas populated by birds or mammals except as necessary in the course of scientific investigations. A compelling scientific purpose must be demonstrated before a permit will be issued to take a native bird or mammal from these sites.

* * * * *

(4) Barwick Valley in Victoria Land and Harmony Point, West Coast of Nelson Island, South Shetland Islands. Management Plan: Entry on foot only will be authorized. Overflight is not permitted. Permanent field camps, landfill disposal, and other activities which would introduce new materials or organisms, including microorganisms, into the Site are not permitted. All materials carried into the Site shall be removed.

(5) Rothera Point, Adelaide Island; Biscoe Point, Anvers Island; and part of Deception Island, South Shetland Islands. Management Plan: Entry by foot only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrians will be allowed to enter the Site only in connection with approved monitoring or sampling activities.

(6) Tramway Ridge, Mt. Erebus, Ross Island. Management Plan: Entry by foot only for scientific purposes wil be authorized. Vehicles and helicopters are excluded. Pedestrians should avoid walking on visible vegetation and areas of heated ground. Sterile protective overclothing should be worn and footwear sterilized before entering the Site. Human wastes must not be deposited within the Site.

(7) Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land. Management Plan: Entry by foot only for scientific purposes will be authorized. Vehicles and helicopters are excluded. Pedestrian movement within the Site is restricted to designated paths and shortest routes consistent with scientific activity.

(8) Potter Peninsula, King George Island, South Shetland Islands. Management Plan: Access is restricted to the northern end in the vicinity of Mirounga Point. Pedestrians and vehicles must use established routes particularly during breeding season. No vehicles or helicopters are allowed near any breeding sites.

(9) North-East Bailey Peninsula and Clarke Peninsula, Budd Coast, Wilkes Land. Management Plan: Vehicles and pedestrians are restricted to existing access routes which are clearly demarcated. No helicopter landings are permitted within the Site. Particular care should be taken to avoid damaging any vegetation, disrupting of soils or morphological features or changing water quality or drainage.

(10) Northwest White Island, McMurdo Sound. Management Plan: Vehicles are not permitted closer than 50 m to the seal population and helicopters are prohibited within the Site. Overflights must be altitudes of 250 m or more.

(11) Linnaeus Terrace, Asgaard Range, Victoria Land. Management Plan: Entry by foot only for scientific purposes will be authorized. Helicopters are allowed at the designated and marked landing site only. Rocks may not be moved from their natural position and great care should be exercised to avoid accidental breakage of fragile rock formations and disturbing periglacial features.

* * * * *

(d) *Expiration dates.* For purposes of these regulations the sites of special scientific interest and accompanying management plans shall remain in effect until deleted from the regulations.

Date: May 4, 1988.

Charles H. Herz,

General Counsel.

[FR Doc. 88-10325 Filed 5-11-88; 8:45 am]

BILLING CODE 7555-01-M

Notices

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1988 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42–44, 53–55) and Cigar-Filler (Type 46) Tobaccos

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of Determination of 1988 Price Support Levels for Six Kinds of Tobacco.

SUMMARY: This notice sets forth the levels of price support for fire-cured (type 21), (2) fire-cured (types 22–23), (3) dark air-cured (types 35–36), (4) Virginia sun-cured (type 37), (5) cigar-filler and binder (types 42–44; 53–55), and (6) cigar-filler (type 46) kinds of tobacco for the 1988 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202 447–8839 or Kenneth Robison, (202) 447–5188. A Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local Governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environent, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983). It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determination of Levels of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1988 crop of the six kinds of tobacco which are the subject of this notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1988 crop of a kind of tobacco shall be the level in cents per pound at which the 1987 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1988 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1987 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1988 crop of such kind of tobacco will be the 1987 level, adjusted by the difference between (plus or minus) the 1988 "basic support level" and the 1987 "basic support level".

In addition, section 106(f)(6)(B) of the Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers ("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco. Accordingly, the price support levels for a kind of tobacco which are set forth in this notice could be reduced if such a request is made.

Additionally, section 106(f)(8)(A) of the Act provides that for the 1988 crop of a kind of tobacco the support level shall be reduced by 1.4 percent of the level otherwise established. Any such reduction under this subsection shall not be taken into consideration in determining the support level for the subsequent crop of tobacco. Also, section 106(f)(8)(B) provides that in lieu of making any such reduction, the Secretary may impose assessments on the producers and purchasers in an amount sufficient to realize a reduction in outlays equal to the amount that would have been achieved as a result of the reduction required under section 106(f)(8)(A).

The levels of price support for the 1987 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A), are as follows:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	119.6
KY–TN fire-cured, types 22–23	123.8
Dark air-cured, types 35–36	105.4
Virginia sun-cured, type 37	105.6
Cigar-filler and binder, types 42–44, 53–55	91.4
Puerto Rican filler, type 46	74.7

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year (298). For the 1988-crop year, the average parity indexes for the three previous years are: 1985–1120; 1986–1096; and 1987–1115. The average of the parity indexes for these years is 1110 and the ratio of the 1985–87 index to the 1959 index is 3.72. For the 1987–crop year, the average parity indexes used to calculate the 1987 "basic support level" were: 1984–1130; 1985–1120; 1986–1097. The ratio of the 1984–86 index to the 1959 index equaled 3.74. Thus, the "basic support level" for the 1987 and 1988 crops of the various kinds of tobaccos and the annual decrease are as shown in the following table:

Kind and type	Basic support Level		Decrease in 1988 from 1987
	1987	1988	
	Cents per pound		
Virginia fire-cured type 21	145.1	144.3	.8
Kentucky-Tennessee fire-cured types 22–23	145.1	144.3	.8
Dark air-cured, types 35–36	129.0	128.3	.7
Virginia sun-cured, types 37	129.0	128.3	.7
Cigar filler and binder, types 42–44, 54–55	107.0	106.4	.6
Puerto Rican filler, type 46	111.1	110.5	.6

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, an anticiapted domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco. Since the 1988 "basic support level" is below the 1987 "basic support level", section 106(d) is not applicable for the 1988 crop.

As noted in the following table, the supplies of all these kinds of tobacco for which price support is made available are currently at, or in excess of, he supply deemed adequate to meet domestic use and export needs. As a result of these increased supplies of tobacco, the quantity of tobacco pledged as collateral for CCC price support loans remains ample to excessive.

Kind and type	1987/88 Production	1987/88 Total Supply	1987/88 Reserve Supply	1987-Crop CCC Loan Collateral	1987/88 CCC Loans as % of production
	Million Pounds				
Virginia fire-cured, type 21	2.6	9.7	8.3	.3	11.5
Kentucky-Tennessee fire-cured types, 22–23	23.3	119.4	116.7	4.5	19.3
Dark air-cured types 35–36	7.0	55.7	54.9	1.1	15.7
Virginia sun-cured, type 37	.1	1.1	1.0	(1)	22.7
Cigar-filler, and binder, types 42–44, 53–55	7.9	61.5	63.8	(1)	0.5
Puerto Rican filler, type 46	.2	5.3	[2] 3.9	.2	100

[1] Less than 50,000 pounds.
[2] Three times annual disappearance past 3 marketing years.

Because of the oversupply situation for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), Puerto Rican filler (type 46), and cigar-filler and binder (types 42–44; 53–55) tobaccos, the 1988 support level for each kind consists of the 1987 level of support decreased by the difference beween the 1988 "basic support level" and the 1987 "basic support level".

For the 1988 crops, the 1.4 percent decrease provided by section 106(f)(8)(A) of the Act would require reductions to the support level of 1.7 cents to 1.0 cents per pound, depending on the kind of tobacco. Alternatively, the assessments for the various kinds of tobacco which would be required for the 1988 crops to achieve the estimated budget reduction obtained from the support reduction range from 0.8 cents to 0.5 cents per pound. The determination with respect to the manner in which this reduction will be made will be announced at a later date.

Proposed Determinations

Accordingly, the Secretary of Agriculture has determined, in accordance with section 106(f)(6)(A) of the 1949 Act, the following price support levels for the 1988 crops of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar filler and binder (types 42–44, 53–55), and Puerto Rican filler (type 46) tobaccos:

Kind and type	Amount (cents per pound)
Virginia fire-cured, type 21	118.8
Kentucky-Tennessee fire-cured, types 22–23	123.0
Dark air-cured, types 35–36	104.7
Virginia sun-cured, type 37	104.9
Cigar-filler and binder, types 42–44, 53–55	90.8
Puerto Rican filler, (type 46)	74.1

Authority: Secs. 4 and 5, Stat. 1070, 1072, as amended, (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 406, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as

amended, 1055, (7 U.S.C. 1441, 1445, 1421, 1423, 1426).

Signed at Washington, DC, on May 6, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-10605 Filed 5-11-88; 8:45 am]

BILLING CODE 3410-05-M

CIVIL RIGHTS COMMISSION

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 3:00 p.m., on May 25, 1988 at the Eldridge Hotel, 7th and Massachusetts, Lawrence, Kansas. The purpose of the meeting is to provide orientation for the rechartered SAC and discuss plans for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett A. Loomis, or Melvin Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 3, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10588 Filed 5-11-88; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 3:00 p.m., on May 23, 1988, at the Providence Marriott Hotel, the Enterprise Room, Charles & Orms Streets, Providence, R.I. 02904. The purpose of the meeting is: (1) To plan a community forum on bigotry and violence, and (2) to discuss the current status of the R.I. SAC report "The Immigration Reform and Control Act of 1986: Civil Rights Issues in Implementing its Legalization and Employer-sanctions Programs."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson David Sholes (401-463-5600) or John I. Binkley, Director of the Eastern Regional Division at (202-523-5264) (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10589 Filed 5-11-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office
Title: Trademark Processing
Form Numbers: Agency—Numerous; OMB—0651-0009
Type of Request: Reinstatement of a previously approved collection
Burden: 72,800 respondents; 31,631 reporting hours
Needs and Uses: Trademarks and service marks which are used in interstate or foreign commerce may be registered in the Patent and Trademark Office. Information provided by individuals and businesses is used by PTO to determine eligibility for trademark/service mark registration.
Affected Public: Individuals; businesses or for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Frank Reeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10636 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Western Pacific Bottomfish Fishery Limited Entry Permit
Form Numbers: Agency—N/A; OMB—N/A
Type of Request: New Collection
Burden: 25 respondents; 40 burden hours
Needs and Uses: The Western Pacific Fishery Management Council is proposing to limit fishing for bottomfish in the northwestern Hawaiian Islands area. The Council is planning to limit fishing in certain areas by only issuing permits to those vessels that participated in this fishery prior to August 8, 1985. Vessel owners will be required to submit with permit applications data verifying their eligibility for a permit. In addition, vessel operators must give notice to the U.S. Coast Guard of their anticipated arrival in port to unload fish taken in restricted areas. This notice will allow time to plan for the inspection of the catch to determine the condition of the stocks.
Affected Public: Individuals; businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion; annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10637 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: U.S., and Foreign Commercial Service (US&FCS) District Office Client Counseling Survey

Form Numbers: Agency—ITA-735P; OMB—N/A

Type of Request: New Collection

Burden: 960 respondents; 240 reporting hours

Needs and Uses: The mission of the District Offices of the U.S.&FCS is to promote exports. Their primary goal is to influence small- and medium-size firms to fully develop their export potential by providing information and advice to assist companies to successfully begin exporting or, if already exporting, to enter new markets. The proposed survey will gather information from businesses that have received counseling and will be used by U.S.&FCS to evaluate the quality of services provided by field personnel.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: Quarterly

Respondent's Obligation: Voluntary

OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10638 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Foreign Fishing Regulations

Form Number: Agency—N/A; OMB—0648-0075

Type of Request: Revision of a currently approved collection

Burden: 500 respondents; 14,631 reporting/recordkeeping hours

Needs and Uses: NOAA's regulations govern foreign fishing within the U.S. exclusive economic zone (EEZ). Approximately 500 foreign vessels receive permits to fish in the EEZ. Foreign fishing vessels entering the EEZ are required to make a number of reports concerning their entry or leaving of the zone, fish caught or received from other vessels, and similar activities. The information is used for fishery management and enforcement purposes.

Affected Public: Businesses or other for-profit institutions

Frequency: On occasion, weekly, quarterly, annually, recordkeeping

Respondent's Obligation: Mandatory

OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Office, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10639 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-CW-M

Office of the Secretary

Federal Coal Export Commission; Committee Meeting

AGENCY: Office of the Secretary, Commerce.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1976), as amended, notice is hereby given that the Federal Coal Export Commission will hold its final meeting to consider its Report to the President and the Congress. Less than fourteen days' notice is being provided in order to allow the Commission to complete its work without further extension of its charter as an advisory committee.

The meeting will be held:

Tuesday, May 17, 1988, beginning at 10:30 a.m., in the Secretary's conference room, Room 5859 of the U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Ave. NW., Washington, DC.

At the meeting, the Commission will discuss the final draft of its Report to the President and the Congress and will consider approval of that document for printing and for transmittal by the Secretary of Commerce as Chairman of the Federal Coal Export Commission.

The public is welcome to attend this meeting and will be admitted to the extent that seating is available. Public comments are welcome, and persons wishing to make formal statements should notify the Chairman *Pro Tem* of the Commission in advance of the meeting. The Chair retains the right to place reasonable limits on the duration of public comments. Written statements may be submitted before or after the meeting.

For further information, contact Robert H. Brumley, Chairman *Pro Tem* of the Commission, at (202) 377-4772.

Signed in Washington, DC, this 9th day of May, 1988.

Robert H. Brumley,

Chairman Pro Tem.

[FR Doc. 88-10792 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-BW-M

International Trade Administration

University of Alabama at Birmingham, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30

a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87–288. *Applicant:* University of Alabama at Birmingham, Birmingham, AL 35294. *Instrument:* Nuclear Magnetic Resonance Spectrometer System, Biospec 4.2/400. *Manufacturer:* Bruker, West Germany. *Intended Use:* See notice at 52 FR 37357, October 6, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (May 2, 1985)

Reasons For This Decision: The foreign instrument provides a 40-centimeter bore size magnet for in vivo studies of large animals such as dogs. The National Institutes of Health advises in its memorandum dated March 8, 1988, that (1) this capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–10643 Filed 5–11–88; 8:45 am]

BILLING CODE 3510-DS-M

Lawrence Berkeley Laboratory, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86–304R–2. *Applicant:* Lawrence Berkeley Laboratory, Berkeley, CA 94720. *Instrument:* Circular Dichroism Spectropolarimeter, Model J–600A. *Manufacturer:* JASCO, Japan. *Intended Use:* See notice at 51 FR 33282, September 19, 1986.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (July 10, 1986).

Reasons: The foreign instrument provides demonstrated sensitivity to 175 nanometers and fluorescence detected circular dichroism capability.

The National Institutes of Health advises in its memorandum dated February 18, 1988 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–10644 Filed 5–11–88; 8:45 am]

BILLING CODE 3510-DS-M

University of Miami et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–081. *Applicant:* University of Miami, Coral Gables, FL 33124. *Instrument:* Mass Sepctrometer, Model PRISM. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 4307, February 18, 1988. *Reasons For This Decision:* The foreign instrument can automatically test small (milligram) samples of carbonate for direct introduction of carbon dioxide to spectrometer inlet.

Docket Number: 88–90. *Applicant:* Appalachian State University, Boone, NC 28608. *Instrument:* Ground Conductivity Meter, Model EM31–DL. *Manufacturer:* Geonics Limited, Canada. *Intended Use:* See notice at 53 FR 6028, February 29, 1988. *Reasons For This Decision:* The foreign instrument provides for in situ measurement of ground conductivity in milli-ohm per meter.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 10645 Filed 5–11–88; 8:45 am]

BILLING CODE 3510-05-M

Robert Packer Hospital; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importantion Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–264.

Applicant: Robert Packer Hospital, Sayre, PA 18840.

Instrument: Extracorporeal Shock Wave Lithotripter (ESWL).

Manufacturer: Dornier Medizintechnik GmbH, West Germany.

Intended Use: See notice at 52 FR 32824, August 31, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: There is no domestic manufacturer of lithotripters or of comparable devices capable of noninvasively pulverizing kidney stones.

Our consultants in the National Institutes of Health have advised us with respect to this application that there are no known domestic instruments now available which are equivalent to the Dornier ESWL.

We know of no equivalent instrument that is being manufactured in the United States which is of equivalent scientific value to the foreign instrument for the purposes for which the instrument is

intended to be used. (See also 52 FR 22512, June 12, 1987.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-10646 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consoldated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 87-155. *Applicant:* Rutgers University, Piscataway, NJ 08854. *Instrument:* Electromechanical (Piezoelectric) Measurement Device. *Manufacturer:* Toyo Seiki Seisaku-Sho Ltd., Japan. *Intended Use:* See notice at 52 FR 18261, May 14, 1987. *Reasons for This Decision:* The foreign instrument provides capability for simultaneous measurements of elastic, dielectric and piezoelectric constants at temperatures ranging from −150° to 250°C. *Advice Submitted By:* National Bureau of Standards, March 31, 1988.

Docket Number: 87-281. *Applicant:* University of Pennsylvania, Phildelphia, PA 19104. *Instrument:* Room Temperature Bore Cargo Magnet System. *Manufacturer:* Magnex Scientific Ltd., United Kingdom. *Intended Use:* See notice at 52 FR 37356, October 6, 1987. *Reasons for This Decision:* The foreign instrument provides a field strength of 5 tesla, uniform within 0.1% over a 10.0 liter volume. *Advice Submitted By:* National Institutes of Health, March 15, 1988.

Docket Number: 88-049. *Applicant:* University of Rochester, Rochester, NY 14620. *Instrument:* Mass Spectrometer, Model VG Sector. *Manufacturer:* VG Isotopes, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 1810, January 22, 1988. *Reasons for This Decision:* The foreign instrument provides automated multiple collection for simultaneous measurement of up to 5 ion beams, a Daly scintillation detector and a guaranteed external reproducibility for strontium of 0.003%. *Advice Submitted by:* National Bureau of Standards, February 25, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health and National Bureau of Standards advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or appartus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or appartus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-10647 Filed 5-11-88; 8:45 pm]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Texaco, Inc. From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On March 23, 1988, the Secretary of Commerce received a notice of appeal and supporting data and information from Texaco, Inc. Texaco, Inc. is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the California Coastal Commission to Texaco Inc.'s consistency certification for a Plan of Exploration permit and a National Pollutant Discharge Elimination System permit for OCS-P Lease 0512. OCS-P Lease 0512 is located offshore of Santa Barbara County, approximately three miles west-southwest of Point Conception.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 (1987) or 930.122 (1987).

Texaco, Inc. requests that the Secretary override the California Coastal Commission's consistency objection based on Grounds I and II. To make the determination that proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with California's coastal management program. *See* 15 CFR 930.121 (1987). To make the determination that the proposed activity is "necessary in the interest of national security", the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122 (1987).

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 (1987) and 15 CFR 930.122 (1987). Comments are due within thirty days of the publication of this notice and should be sent to Cynthia L. Mackey, Attorney-Adviser, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to Dorothy Dickey, Esquire, California Coastal Commission, 631 Howard Street, San Francisco, California, 94105 and G.F. Clarke, Division Vice President, Texaco USA, 10 Universal City Plaza, Universal City, California, 91608-1097.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the California Coastal Commission, Texaco USA and the Office of General Counsel, NOAA.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: May 6, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88-10651 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Proposed Permit Modification: Northwest and Alaska Fisheries Center, National Marine Fisheries Service (P77#28)

On February 25, 1988 (53 FR 5615) notice was published that the Northwest and Alaska Fisheries Center, National Marine Fisheries Service (NMFS), 7600 Sand Point Way, NE., Seattle, Washington 98115 had requested a modification to Permit No. 598 issued on July 17, 1987 (52 FR 27097), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fur Seal Act of 1966 (16 U.S.C. 1151-1187), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder requested authorization to capture, handle, mark, tag and release up to 3,260 additional northern fur seals (*Callorhinus ursinus*) during studies of survival, reproduction, feeding and physiological condition of the fur seal population in the eastern North Pacific Ocean; harass an unspecified number of fur seals during the course of on land observations, aerial and vessel surveys; and to modify section A.3 to allow seals to be killed or injured during research activities.

The Office of Protected Resources has received supplemental information concerning this modification request and is extending the comment period until May 27, 1988.

Documents are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC.;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington, 98115;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802.

Dated: May 5, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88-10583 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Molecular Oncology Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Molecular Oncology Inc. having a place of business in New York, N.Y., an exclusive license in the United States and certain foreign countries to practice the invention entitled "A Kit for Diagnosing Cancer Metastatic Potential", U.S. Patent Application No. 7-107,098. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 83-10600 Filed 5-11-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Navy

Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of Navy and are made available for licensing by the Department of the Navy.

Copies of patent cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000, telephone (202) 696-4001.

Patent 4,495,511: PERMEABLE BASE TRANSISTOR; filed 23 August 1982; patented 22 January 1985.

Patent 4,496,218: HYDRAULIC AUTOMATIC LIGHT; filed 24 June 1982; patented 29 January 1985.

Patent 4,498,368: FRANGIBLE FLY THROUGH DIAPHRAGM FOR MISSILE LAUNCH CANISTER; filed 6 October 1983; patented 12 February 1985.

Patent 4,504,230: PREFABRICATED DENTAL ONLAYS AND METHOD THEREFOR; filed 23 March 1983; patented 12 March 1985.

Patent 4,504,232: BATTLEFIELD FRIEND OR FOE INDENTIFICATION TRAINER; filed 3 March 1983; patented 12 March 1985.

Patent 4,509.431: BRIDGE CRANE HOIST STOP SYSTEM; filed 5 July 1983; patented 9 April 1985.

Patent 4,509.549: HYDRAULIC POWERED GATE VALVE; filed 12 October 1982; patented 9 April 1985.

Patent 4,519,082: COLOR CENTER LASER, MATERIAL, AND METHOD OF LASING; filed 10 March 1982; patented 21 May 1985.

Patent 4,525,843: RING LASER WITH WAVEFRONT CONJUGATING BEAMS; filed 29 April 1982; patented 25 June 1985.

Patent 4,526,858: METHOD FOR FABRICATING SUPERCONDUCTING WEAK-LINKS USING ELECTRON BEAM LITHOGRAPHY; filed 11 January 1982; patented 2 July 1985.

Patent 4,527,040: METHOD OF LASER WELDING; filed 16 June 1983; patented 2 July 1985.

Patent 4,527,749: INTERFEROMETRIC FIBER OPTIC HYDROPHONE WINDING MACHINE; filed 9 February 1984; patented 9 July 1985.

Patent 4,528,253: HIGH PERFORMANCE MOLTEN NITRATE CELL; filed 21 September 1984; patented 9 July 1985.

Patent 4,529,966: HIGH-SPEED BIPOLAR LOGARITHMIC ANALOG-TO-DIGITAL CONVERTER; filed 11 October 1983; patented 16 July 1985.

Patent 4,530,096: LOWBITRON—A SOURCE OF COHERENT ELECTROMAGNETIC RADIATION; filed 15 November 1982; patented 16 July 1985.

Patent 4,531,128: BUOYANT RADAR REFLECTOR; filed 26 July 1982; patented 23 July 1985.

Patent 4,534,009: PIPELINED FET PROCESSOR; filed 10 May 1982; patented 6 August 1985.

Patent 4,535,011: MON (PENTAFLUOROSULFUR) DIACTYLENE, POLYMER THEREFROM, AND PREPARATIONS THEREOF; filed 16 December 1983; patented 13 August 1985.

Patent 4,535,037: LITHIUM-BORON ANODES IN NITRATE THERMAL BATTERY CELLS; filed 23 November 1984; patented 13 August 1985.

Patent 4,540,145: REEFING SYSTEM; filed 27 August 1984; patented 10 September 1985.

Patent 4,548,506: NONDESTRUCTIVE ANALYSIS OF MULTILAYER ROUGHNESS CORRELATION; filed 26 December 1979; patented 22 October 1985.

Patent 4,549,177: PRECISION FATHOMETER INTERFACE ADAPTOR; filed 6 April 1983; patented 22 October 1985.

Patent 4,549,294: TIME-OF-ARRIVAL PULSED WAVEFORM MULTIPLEXER; filed 12 March 1984; patented 22 October 1985.

Patent 4,555,726: VIDEO TARGET TRACK VALID INDICATOR; filed 5 March 1984; patented 26 November 1985.

Patent 4,557,197: PYROGEN IGNITER; filed 30 March 1984; patented 10 December 1985.

Patent 4,561,272: PADLOCK SHACKLE; filed 5 July 1984; patented 31 December 1985.

Patent 4,562,554: UNIVERSAL MICROCOMPUTER FOR INDIVIDUAL SENSORS; filed 9 June 1983; patented 31 December 1985.

Patent 4,562,580: PHOTOLYTIC IMPROVEMENT OF DYE LASER LIFETIMES; filed 27 July 1984; patented 31 December 1985.

Patent 4,570,658: PYROTECHNIC-ACTUATED DUAL AIR VALVE; filed 15 August 1983; patented 18 February 1986.

Patent 4,574,259: HIGH SWITCHING SPEED ELECTRICALLY TUNED MICROWAVE MAGNETIC RESONANCE DEVICES; filed 20 December 1984; patented 4 March 1986.

Patent 4,575,723: FOLIAGE CLUTTER REJECTOR; filed 16 February 1982; patented 16 February 1986.

Patent 4,588,149: LOWERED OPENING SHOCK PARACHUTE CANOPY; filed 20 September 1984; patented 13 May 1986.

Patent 4,589,772: PULSED REMOTE GAUGE; filed 25 May 1972; patented 20 May 1986.

Patent 4,592,004: ELECTROOPTICAL MATRIX MULTIPLICATION USING THE TWOS COMPLEMENT ARITHMETIC FOR IMPROVED ACCURACY; filed 21 May 1984; patented 27 May 1986.

Patent 4,595,909: N-BIT PROPAGATORY ANALOG-TO-DIGITAL CONVERTER SYSTEM; filed 25 November 1981; patented 17 June 1986.

Patent 4,596,412: TACTILE BUMPER FOR A MOBILE ROBOT OR PLATFORM; filed 21 February 1985; patented 24 June 1986.

Patent 4,597,639: DIELECTRIC AIR-INTERFACE PLASMA OPTICAL POWER LIMITER; filed 7 May 1984; patented 1 July 1986.

Patent 4,598,294: TEST SIGNAL GENERATOR FOR COHERENT AIR-TO-GROUND RADARS; filed 23 December 1983; patented 1 July 1986.

Patent 4,598,595: TORQUE GAUGE FOR APPLICATIONS INCLUDING ROBOTICS: filed 18 April 1985; patented 8 July 1986.

Patent 4,599,030: MARGINAL TERRAIN STRADDLE-LIFT CONTAINER HANDLER; filed 1 April 1985; patented 8 July 1986.

Patent 4,599,044: ELECTRONIC FEEDBACK AREA CONTROL SYSTEM FOR TVC GAS GENERATOR; filed 7 January 1985; patented 8 July 1986.

Patent 4,599,505: FLEXIBLE TRAILING SHIELD FOR WELDING REACTIVE METALS; filed 31 March 1983; patented 8 July 1986.

Patent 4,599,620: METHOD FOR DETERMINING THE ORIENTATION OF A MOVING PLATFORM; filed 4 December 1984; patented 8 July 1986.

Patent 4,599,730: VISIBLE AND ULTRAVIOLET LASER BASED ON EXCIMER TRANSITIONS IN THE HOMONUCLEAR HALOGENS; filed 1 October 1984; patented 8 July 1986.

Patent 4,599,745: HYBRID FIBER OPTICS AND RADIO FREQUENCY TELEMETRY APPARATUS FOR ACQUIRING DATA FROM AN UNDERWATER ENVIRONMENT; filed 21 May 1984; patented 8 July 1986.

Patent 4,608,537: LOW PERTURBATION ELECTRON INJECTOR FOR CYCLIC ACCELERATORS; filed 14 June 1984; patented 26 August 1986.

Patent 4,609,888: DIRECTIONAL FINDING ANTENNA INTERFACE; filed 2 October 1980; patented 2 September 1986.

Patent 4,611,929: SATELLITE METHOD FOR MEASURING SEA SURFACE TEMPERATURE; filed 21 March 1983; patented 16 September 1986.

Patent 4,612,208: POLARIZATION-PRESERVING SINGLE MODE FIBER COUPLER; filed 7 October 1985; patented 16 September 1986.

Patent 4,612,213: NICKEL OXIDE BATTERY CATHODE PREPARED BY OZONATION; filed 25 August 1982; patented 16 September 1986.

Patent 4,612,543: INTEGRATED HIGH-GAIN ACTIVE RADAR AUGMENTOR; filed 5 May 1983; patented 16 September 1986.

Patent 4,624,573: TOTAL OPTICAL LOSS MEASUREMENT DEVICE; filed 14 May 1984; patented 25 November 1986.

Patent 4,624,755: PREPARATION OF IONIC LIQUIDS FOR ELECTRODEPOSITION; filed 5 June 1985; patented 25 November 1986

Patent 4,644,273: FIVE-AXIS OPTICAL FIBER GRADIOMETER; filed 2 July 1985; patented 17 February 1987.

Patent 4,654,231: REACTIVE EVAPORATION OF VANADIUM DIOXIDE THIN FILMS; filed 21 May 1985; patented 31 March 1987.

Patent 4,661,819: DOPPLER TOLERANT BINARY PHASE CODED PULSE COMPRESSION SYSTEM; filed 12 May 1983; patented 28 April 1987.

Patent 4,662,998: ELECTRODEPOSITION OF REFRACTORY METAL SILICIDES; filed 12 december 1985; patented 5 May 1987.

Patent 4,667,902: PASSIVE ARM RETENTION CURTAIN; filed 2 November 1984; patented 26 May 1987.

Patent Application 043,267: 2,2,2-TRINITROETHYL 2-NITROXYETHYL ETHER AND A METHOD OF PREPARATION; filed 27 April 1987.

Patent Application 043,269: 4,4,10,10-TETRANITRO-6, 8-DIOXATRIDECANE-1, 13-DIOL POLYFORMAL AND METHOD OF PREPARATION; filed 27 April 1987.

Date May 9, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-10602 Filed 5-11-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Vocational Education National Council; Open Meeting

AGENCY: National Council on Vocational Education.

ACTION: Notice of Public Meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE:

May 22, 1988—5:00 P.M. to 7:00 P.M.
May 23, 1988—9:00 A.M. to 4:00 P.M.

ADDRESS: Hotel Washington, Pennsylvania Avenue at 15th Street, Washington, DC 20004. (202) 638–5900.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include: Annual Report, Committee Reports, Council Initiatives, Future Activities.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street, SW., Suite 4080, Washington, DC 20202, (202) 732–1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 A.M. to 4:30 P.M.

Signed at Washington, DC, May 6, 1988.

Joyce Winterton,

Executive Director.

[FR Doc. 88–10599 Filed 5–11–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Texaco Inc.; Correction

In the **Federal Register** of April 27, 1988 (53 FR 15106), the Economic Regulatory Administration published a proposed Consent Order with Texaco Inc. The following correction is made to correct an editorial error in that document. On page 15109, in the eighteenth line of the third column, "198 million", should read, "190 million".

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88–10603 Filed 5–11–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 7693–001]

Saylorville Hydro Partners; Availability of Environmental Assessment and Finding of No Significant Impact

May 10, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for major license listed below and has assessed the environmental impacts of the proposed development.

LICENSE

Project No.	Project name	State	Water body	Nearest town or county	Applicant
7693–001	Saylorville	Iowa	Des Moines River	Polk Co	Saylorville Hydro Partners.

An Environmental Assessment (EA) was prepared for the above proposed project. Based on independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement for this project will not be prepared. Copies of the EA are available for review in the Commisison's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10661 Filed 5–11–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2998]

Massachusetts Bay Power Co., Intent To Hold a Public Meeting Concerning the Centennial Island Project

May 6, 1988.

Massachusetts Bay Power Company, exemptee for the Centennial Island Project, FERC No. 2998, has requested a fourth extension of time to complete construction of the project. The project is located on the Concord River and the Wamesit Canal, in the City of Lowell, Middlesex County, Massachusetts.

Staff of the Federal Energy Regulatory Commission has reviewed the record in this case and has determined that a public meeting is necessary to evaluate the merits of the request.

Members of the public and interested officials are invited to express their views about the project and the requested extension of time in a public meeting to be held on May 23, 1988, from 6 p.m. to 8 p.m., at the Mayor's Reception Room, Lowell City Hall, 375 Merrimack Street, Lowell, Massachusetts 01852.

The meeting will be used by the Commission staff to (1) receive input from the public and from the experts on the project's safety and environmental issues; (2) clarify the significance of the issues; and (3) identify additional issues for consideration. Agencies and individuals with safety and

environmental expertise and concerns are encouraged to attend the meeting to assist the Commission's staff on these matters. The town meeting in no way excuses the exemptee from its obligations as described in the order for compliance issued by the Commission on April 27, 1988.

The Commission's staff will conduct the meeting. At the meeting, persons may make statements orally or in writing. The meeting will be recorded by a stenographer, and all oral and written statements will become part of the public record. In addition, the public meeting record will remain open until June 13, 1988, and anyone may submit written comments on the extension request until that time. All written comments must be in one original and five copies and addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The comments should clearly show, on the first page, the Caption, Centennial Island Project, FERC No. 2998.

For further information, please contact Hossein Ildari, staff engineer, at (202) 376–9060 or Demetra Anas, staff attorney, at (202) 357–5228.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10662 Filed 5–11–88; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–005200–056.
Title: Pacific Coast European Conference.
Parties:

Compagnie Generale-Maritime
Hapag-Lloyd AG
Incotrans B.V.
Johnson Scanstar
Sea-Land Service, Inc.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 206–010715–003.
Title: Eurospan.
Parties:

North Europe-U.S. Gulf Freight Association
Gulf-European Freight Conference

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Service Contract provisions. The parties have requested a shortened review period.

Agreement No.: 203–011178–001.
Title: APL/Waterman Cooperative Agreement for Charter of S.S. PRESIDENT TAYLOR.
Parties:

American President Lines, Ltd.
Waterman Steamship Corporation

Synopsis: The proposed amendment would clarify that the Agreement applies to that component of the charter-hire determined by voyage profits, and that no agreement provisions relating to the sharing of profits and losses may be implemented until they are filed and permitted to become effective in accordance with the Commission's regulations.

By Order of the Federal Maritime Commission.

Dated: May 9, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–10614 Filed 5–11–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 5, 1988.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register,** but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202–395–7340).

Board of Governors of the Federal Reserve System, *Request for OMB approval to revise the following report:*

Report title: Reports of Condition and Income.
Agency form number: FFIEC 031–034.
OMB Docket number: 7100–0036.
Frequency: Quarterly.
Reporters: State member banks.
Annual reporting hours: 149,178.
Small businesses are affected.
General description of report:

This information collection is mandatory [12 U.S.C. 324] and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed revision for June 1988 consists of the addition of an item asking whether the respondent bank has had an external audit in the previous calendar year, and of what scope. The item would be collected on the June 1988 reports and annually thereafter only on the March report date.

Board of Governors of the Federal Reserve System, May 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-10577 Filed 5-11-88; 8:45 am]

BILLING CODE 6210-01-M

Bank of Montreal et al,; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless othewise noted, such activities will be conducted throughout the Unites States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Intested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effedts, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in duspute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 1, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal,* Montreal, Quebec, Canada, and Bankmont Financial Corporation, Wilmington, Delaware, to acquire Harris Government Securities, Inc., Chicago, Illinois, and thereby engage, through company, in the activities of underwriting, dealing in, brokering, purchasing, and selling of obligations of the U.S. Government and its various agencies pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10578 Filed 5-11-88; 8:45 am]

BILLING CODE 6210-01-M

First Litchfield Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received no later than June 1, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Litchfield Financial Corporation,* Litchfield, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Litchfield, Litchfield, Connecticut.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pikeville National Corporation,* Pikeville, Kentucky; to acquire 100 percent of the voting shares of Whitley-Williamsburg Financial Corp., Williamsburg, Kentucky, and thereby indirectly acquire Farmers National Bank, Williamsburg, Kentucky. Comments on this application must be received by June 3, 1988.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Volunteer State Bancshares, Inc.,* Portland, Tennessee; to merge with BOC Bancorp, Inc., Woodbury, Tennessee, and thereby indirectly acquire Bank of Commerce, Woodbury, Tennessee.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation,* Zeeland, Michigan; to merge with CSB Financial Corporation, Greenville, Michigan, and thereby indirectly acquire Commercial Bank, Greenville, Michigan. Comments on this application must be received by June 3, 1988.

2. *Fort Madison Financial Company,* Fort Madison, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Madison Bank & Trust Company, Fort Madison, Iowa.

3. *Suburbank Bancorp, Inc.,* Palatine, Illinois; to acquire 100 percent of the voting shares of Continental Bank of Oakbrook Terrace, Oakbrook Terrace, Illinois.

Board of Governors of the Federal Reserve System, May 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10580 Filed 5-11-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Terry M. Keathley

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of

Governors. Comments must be received no later than May 27, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street N.W., Atlanta, Georgia 30303:

1. *Terry M. Keathley,* Stuart, Florida; to retain 6.54 percent of the voting shares of American Bank Capital Corporation of Florida, and thereby indirectly acquire American Bank of Martin County, Stuart, Florida.

2. *Joseph W. Stephens,* Montevallo, Alabama, and Kermit Stephens, Brierfield, Alabama; to acquire an additional 20.7 percent of the voting shares of First State Corp., West Blocton, Alabama, and thereby indirectly acquire First State Bank of Bibb County, West Blocton, Alabama.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Peter D. Jaffe,* Brooklyn, New York; to acquire 81.59 percent of the voting shares of First Fordyce Bancshares, Inc., Fordyce, Arkansas, and thereby indirectly acquire First National Bank of Fordyce, Fordyce, Arkansas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Frank E. O'Bryan,* Newport Beach, California, to acquire an additional 9.55 percent; Eldon R. Eakin, Gardena, California, to acquire an additional 4.19 percent; Wilbur R. Hunter, Lawndale, California, to acquire an additional 1.77 percent; Robert J. Jones, Lawndale, California, to acquire an additional 4.6 percent; and Roy W. Murdock, Gardena, California, to acquire an additional 3.97 percent of the voting shares of American Republic Bancorp, Torrance, California, and thereby indirectly acquire Republic Bank, Gardena, California.

Board of Governors of the Federal Reserve System, May 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10579 Filed 5-11-88; 8:45 am]

BILLING CODE 6210-01-M

The Mitsubishi Bank, Ltd.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted througout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank, Ltd.,* Tokyo, Japan; to engage *de novo* through its subsidiary, Mitsubishi Capital, Inc., New York, New York, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) as would be made by a commerical finance company, for MCI's account or the account of others pursuant to § 225.25(b)(1); acting as an investment or financial adviser to the extent of providing portfolio investment advice to other persons pursuant to § 225.5(b)(4)(iii); and leasing personal and real property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10581 Filed 5-11-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 27]

Federal Travel Regulations

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of changes to the Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 27, to transmit a change to the Federal Travel Regulations (FTR), FPMR 101-7, to include tax tables for computing the 1988 relocation income tax (RIT) allowance and refine certain language and examples.

EFFECTIVE DATE: The provisions transmitted by Supplement 27 are effective January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Staff members, Regulations and Policy Division, FTS 557-1256 (for non FTS use AC 703).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

Background Information: Section 5724b of Subchapter II of Chapter 57, title 5, United States Code, authorizes agencies to reimburse transferred employees for the additional income tax liability they incur as a result of certain moving expense reimbursements. Policies and procedures for the calculation and payment of a relocation income tax (RIT) allowance are contained in the FTR, Chapter 2, Part 11. This supplement contains the tax tables generated by the Internal Revenue Service (IRS) specifically for use in calculating 1988 RIT allowance payments and clarifications in policy necessitated by the phased implementation of the Tax Reform Act of 1986. The basic procedures and formulas have not changed from those issued for the 1987 RIT allowance payments.

Advice to agencies: a. The Tax Reform Act of 1986 changed the moving

expense deduction from an above-the-line deduction to an itemized deduction. Employees will no longer be able to deduct moving expenses if they elect to take the standard deduction. However, the General Services Administration and the IRS have determined that for calculating taxable reimbursements subject to the RIT allowance it is reasonable to assume that employees receive the benefit of offsetting deductions either through itemizing deductions or the increased standard deduction. Therefore, the RIT allowance shall be calculated as if the employee had itemized and claimed all allowable moving expense deductions.

b. In addition, the 80 percent limitation on meal expense deductions does not affect the RIT allowance calculations.

Explanation of changes: This supplement amends the FTR to include a Federal Tax Table for 1988, and Federal and State Tax Tables for 1987, and to update the examples shown for calculating the RIT allowance. A provision is added to indicate that calculation of the RIT allowance is not affected by an employee's choice between itemizing deductions or taking the standard deduction. A new provision allows the entire WTA payment to be treated as an excess payment if the employee fails to file a RIT allowance claim in a timely manner. The certification provisions are revised to require the spouse to sign the tax information statement if joint filing status and spouse's income are claimed. Further, the examples in the regulation have been updated to reflect the new tax rates. Examples of IRS forms 3903 and 4782 contained in Figures 2–11.8b and 2–11.8c are deleted. Agencies and employees should refer to IRS publication 521, "Moving Expenses," for guidance in using the new forms for the 1987 tax year. The entire text of Part 2–11 is reprinted for user convenience along with revised examples and Federal and State tax tables for 1987 and 1988. Tax tables previously issued for prior tax years are not reprinted but should be retained in the regulations.

Accordingly, the Federal Travel Regulations are amended as indicated in the changes that follow.

Dated: April 26, 1988.

John Anderson,

Acting Administrator.

For the reasons stated above, the Federal Travel Regulations are amended as follows:

CHAPTER 2. RELOCATION ALLOWANCES

1. **Authority:** (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707; Executive Order No. 11609, July 22, 1971 as amended by Executive Order No. 12466, February 27, 1984.)

Part 11. Relocation Income Tax (RIT) Allowance

2. Part 2–11 is amended by revising the text of Part 2–11 and the footnotes in Example 1 in Figure 2–11.8a, deleting Examples 2 and 3 in Figures 2–11.8b and 2–11.8c and revising Example 4 in Figure 2–11.8d and redesignating it as Example 2, Figure 2–11.8b, to read as follows:

Part 11. Relocation Income Tax (RIT) Allowance

2–11.1. Authority.

Payment of a relocation income tax (RIT) allowance is authorized to reimburse eligible transferred employees for substantially all of the additional Federal, State, and local income taxes incurred by the employee, or by the employee and spouse if a joint tax return is filed, as a result of certain travel and transportation expenses and relocation allowances which are furnished in kind, or for which reimbursement or an allowance is provided by the Government (5 U.S.C. 5724b, as amended). The RIT allowance shall be calculated and paid as provided in this Part 11.

2–11.2. Coverage.

a. *Eligible employees.* Payment of a RIT allowance is authorized for employees transferred on or after November 14, 1983, in the interest of the Government from one official station to another for permanent duty. The effective date of an employee's transfer is the date the employee reports for duty at the new official station as provided in paragraph 2–1.4j.

b. *Individuals not covered.* The provisions of this Part 11 are not applicable to the following individuals or employees:

(1) New appointees as defined in 2–1.5e, including those covered under 2–1.5f (i.e., new appointees to shortage category or Senior Executive Service positions, and new Presidential appointees) and 2–1.5g(2) (i.e., new appointees to overseas posts of duty);

(2) Employees assigned under the Government Employees Training Act (see 5 U.S.C. 4109); or

(3) Employees returning from overseas assignments for the purpose of separation.

2–11.3. Types of Moving Expenses or Allowances Covered and General Limitations

The RLT allowance is by law limited as to the types of moving expenses that can be covered. The law authorizes reimbursement of additional income taxes resulting from certain moving expenses furnished in kind or for which reimbursement or an allowance is provided to the transferred employee by the Government. However, such moving expenses are covered by the RIT allowance only to the extent that they are (1) actually. paid or incurred, and (2) are not allowable as a moving expense deduction for tax purposes. The types of expenses or allowances listed in a through i, below, are covered by the RIT allowance within the limitations discussed.

a. *En route travel.* Travel (including per diem) and transportation expenses of the transferred employee and immediate family for en route travel from the old official station to the new official station. (See FTR Part 2–2.)

b. *Household goods shipment.* Transportation (including temporary storage) expenses for movement of household goods from the old official station to the new official station. (See FTR Part 2–8.)

c. *Nontemporary storage expenses.* Allowable expenses for nontemporary storage of household goods belonging to an employee transferred on or after November 14, 1983, through October 11, 1984, to an isolated location in the conterminous United States. (See FTR 2–9.1.) Nontemporary storage expenses are not covered by the RIT allowance for transfers on or after October 12, 1984. (See 2–11.4c.)

d. *Mobile home movement.* Expenses for the movement of a mobile home for use as a residence when movement is authorized instead of shipment and temporary storage of household goods. (See FTR Part 2–7.)

e. *Househunting trip.* Travel (including per diem) and transportation expenses of the employee and spouse for one round trip to the new official station to seek permanent residence quarters. (See FTR Part 2–4.)

f. *Temporary quarters.* Subsistence expenses of the employee and immediate family during occupancy of temporary quarters. (See FTR Part 2–5.)

g. *Real estate expenses.* Allowable expenses for the sale of the residence (or expenses of settlement of an unexpired lease) at the old official station and for purchase of a home at the new official station for which

reimbursement is received by the employee. (See FTR Part 2–6.)

h. *Miscellaneous expense allowance.* A miscellaneous expense allowance for the purpose of defraying certain expenses associated with discontinuing a residence at one location and establishing a residence at the new location in connection with an authorized or approved permanent change of station. (See FTR 2–3.)

i. *Relocation services.* Payments, or portions thereof, made to a relocation service company for services provided to a transferred employee (see FTR Part 2–12), subject to the conditions stated below and within the general limitations of this paragraph applicable to other covered expenses.

(1) *For employees transferred on or after November 14, 1983, through October 11, 1984.* The amount of a broker's fee or real estate commission, or other real estate sales transaction expenses which normally are reimbursable to the employee under FTR 2–6.2 but have been paid by a relocation service company incident to an assigned sale from the employee, provided that such payments constitute income to the employee. For the purposes of this regulation, an assigned sale occurs when an employee obtains a binding agreement for the sale of his/her residence and assigns the inherent rights and obligations of that agreement to a relocation company that is providing services under contract with the employing agency. For example, if the employee incurs an obligation to pay a specified broker's fee or real estate commission under the terms of the sales agreement, this obligation along with the sales agreement is assigned to the relocation company and may, upon payment of the obligation by the relocation company, constitute income to the employee. (See FTR 2–12.7 entitled "Income tax consequences of using relocation companies.")

(2) *For employees transferred on or after October 12, 1984.* Expenses paid by a relocation company providing relocation services to the transferred employee pursuant to a contract with the employing agency to the extent such payments constitute income to the employee. (See FTR 2–12.7.)

Note.—See FTR reference shown in parentheses for reimbursement provisions for each allowance listed in a through i, above. See Section 217 of the Internal Revenue Code (IRC) and Internal Revenue Service (IRS) Publication 521 entitled "Moving Expenses" and appropriate State and local tax authority publications for additional information on the taxability of moving expense reimbursements and the allowable tax deductions for moving expenses.

2–11.4. Exclusions From Coverage

The provisions of this Part 11 are not applicable to the following:

a. Any tax liability that may result from payments by the Government to relocation companies on behalf of employees transferred on or after November 14, 1983, through October 11, 1984, other than the payments for those expenses specified in 2–11.3i(1).

b. Any tax liability incurred for local income taxes other than city income tax as a result of moving expense reimbursements for employees transferred on or after November 14, 1983, through October 11, 1984. (See definition in 2–11.5b.)

c. Any tax liability resulting from reimbursed expenses for any nontemporary storage of household goods except as specifically provided for in 2–11.3c.

d. Any tax liability resulting from paid or reimbursed expenses for shipment of a privately owned automobile.

e. Any tax liability resulting from an excess of reimbursed amounts over the actual expense paid or incurred. For instance, if an employee's reimbursement for the movement of household goods is based on the commuted rate schedule and his/her actual moving expenses are less than the reimbursement, the tax liability resulting from the difference is not covered by the RIT allowance. (See 2–11.8c(2)(a).)

f. Any tax liability resulting from an employee's decision not to deduct moving expenses for which a tax deduction is allowable under the Internal Revenue Code or appropriate State and local tax codes. (See 2–11.8b(1) and 2–11.8c(2).)

2–11.5. Definitions and discussion of terms

For purposes of this part, the following definitions will apply:

a. *State income tax.* A tax, imposed by a State tax authority, that is deductible for Federal income tax purposes as a State income tax under section 164(a)(3) of the IRC. "State" means any one of the several States of the United States and the District of Columbia.

b. *Local income tax.* A tax, imposed by a recognized city or county tax authority, that is deductible for Federal income tax purposes as a local (city or county) income tax under section 164(a)(3) of the IRC; except, that for employees transferred on or after November 14, 1983, through October 11, 1984, local income tax shall be construed to mean only city income tax. For purposes of this regulation:

(1) "City" means any unit of general local government which is classified as a municipality by the Bureau of the Census, or which is a town or township that in the determination of the Secretary of the Treasury possesses powers and performs functions comparable to those associated with municipalities, is closely settled, and contains within its boundaries no incorporated places as defined by the Bureau of the Census (31 CFR 215.2(b)(1)).

(2) "County" means any unit of local general government which is classified as a county by the Bureau of the Census (31 CFR 215.2(e)).

c. *Covered moving expense reimbursements or covered reimbursements.* As used herein, these terms include those moving expenses listed in 2–11.3 as being covered by the RIT allowance and which may be furnished in kind, or for which reimbursement or an allowance is provided by the Government.

d. *Covered taxable reimbursements.* Covered moving expense reimbursements minus the tax deductions allowable under the IRC and IRS regulations for moving expenses. (See determination in 2–11.8c.)

e. *Year 1 or reimbursement year.* The calendar year in which reimbursement or payment for moving expenses is made to, or for, the employee under the provisions of the FTR, Chapter 2. All or part of these reimbursements (see 2–11.6) are reported to the IRS as income (wages, salary, or other compensation) to the employee for that tax year under the provisions of the IRC and IRS regulations, and are subject to Federal tax withholding. The withholding tax allowance (WTA) (see 1, below) is calculated in Year 1, to cover the employee's Federal tax withholding obligations each time covered moving expense reimbursements are made that result in a Federal tax withholding obligation. For purposes of this regulation, an advance of funds for any of the covered moving expenses is not considered to be a reimbursement or a payment until the travel voucher settlement for such expenses takes place. If an employee's reimbursement for moving expenses is spread over more than one year, he/she will have more than one Year 1.

f. *Year 2.* The calendar year in which a claim for the RIT allowance is paid.

(1) Generally, Year 2 will be the calendar year immediately following Year 1 and in which the employee files a tax return reflecting his/her tax liability for income received in Year 1. However, there may be instances where the

employee's claims submission and/or payment of the RIT allowance is delayed beyond the calendar year immediately following Year 1. (Year 1 will always be the calendar year that reimbursements are received; see e, above.) Year 2 will be the calendar year in which the RIT allowance is actually paid.

(2) The RIT allowance is calculated in Year 2 and paid to cover the additional tax liability (resulting from moving expense reimbursements received in Year 1) not covered by the WTA paid in Year 1. If an employee's covered taxable reimbursements are spread over more than one year, he/she will have more than one Year 2.

g. *Federal withholding tax rate (FWTR).* The tax rate applied to incremental income to determine the amount to be withheld for Federal income tax from salary or other compensation such as moving expense reimbursements. Because moving expense reimbursements constitute supplemental wages for Federal income tax purposes, the 20 percent flat rate of withholding is generally applicable to such reimbursements. (See 2–11.7c.) Agencies should refer to the Treasury Fiscal Requirements Manual, ITFRM 3–5000, and applicable IRS regulations for complete and up-to-date information on this subject.

h. *Earned income.* For purposes of the RIT allowance, "earned income" shall include only the gross compensation (salary, wages, or other compensation such as reimbursement for moving expenses and the related WTA (see n, below) and any RIT allowance (see m, below) paid for moving expense reimbursement in a prior year) that is reported as income on IRS Form W–2 for the employee (employee and spouse, if filing jointly), and if applicable, the net earnings (or loss) for self-employment income shown on Schedule SE of the IRS Form 1040. Earned income may be from more than one source. (See 2–11.8d.)

i. *Marginal tax rate (MTR).* The tax rate (for example 35 percent) applicable to a specific increment of income. The Federal and State marginal tax rates to be used in calculating the RIT allowance are provided in appendices 2–11.A, B, and C. See 2–11.8e(3) for instructions on local marginal tax rate determinations.

j. *Combined marginal tax rate (CMTR).* A single rate determined by combining the applicable marginal tax rates for Federal, State, and local income taxes, using the formulas provided in 2–11.8e(4).

k. *Gross-up.* Payment for the estimated additional income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expense reimbursements listed in 2–11.3.

l. *Gross-up formulas.* The formulas used to determine the amount of the gross-up for the WTA and the RIT allowance. The formulas used herein (see 2–11.7d and 2–11.8f) compensate the employee for the initial tax, the tax on tax, etc. Note that the WTA gross-up formula in 2–11.7d is different than the RIT gross-up formula prescribed in 2–11.8f.

m. *RIT allowance.* The amount of payment computed and paid in Year 2 to cover substantially all of the estimated additional tax liability incurred as a result of the covered moving expense reimbursements received in Year 1.

n. *Withholding tax allowance (WTA).* The withholding tax allowance (WTA), paid in Year 1, covers the employee's Federal income tax withholding liability on covered taxable reimbursements received in Year 1. The amount is computed by applying the withholding gross-up formula prescribed in 2–11.7d (using the Federal withholding tax rate) each time that a Federal withholding obligation is incurred on covered moving expense reimbursements received in Year 1. Grossing-up the Federal withholding amount protects the employee from having to use part of his/her moving expense reimbursement to pay Federal withholding taxes. (See 2–11.7.)

2–11.6. Procedures in general.

a. This regulation sets forth procedures for the computation and payment of the RIT allowance and defines agency and employee responsibilities. This regulation does not require changes to those internal fiscal procedures established by the individual agencies pursuant to IRS regulations, or the Treasury Fiscal Requirements Manual, provided that the intents of the statute authorizing the RIT allowance and this regulation are not disturbed.

b. The total amount reimbursed or paid to the employee, or on his/her behalf, for travel, transportation, and other relocation expenses and allowances is includable in the employee's gross income pursuant to the IRC and certain State or local government tax codes. Some moving expenses for which reimbursements are received may be deducted from income by the employee as moving expense deductions, subject to certain limitations prescribed by the IRS or pertinent State or local tax authorities. Reimbursements for nondeductible moving expenses are subject to income tax. (See IRS Publication 521 entitled "Moving Expenses" and the appropriate State and local tax codes for detailed information.)

c. Usually, if the employee is reimbursed for nondeductible moving expenses, the amount of these reimbursements is subject to withholding of Federal income tax in accordance with IRS regulations at the time of reimbursement. Under existing fiscal procedures, the amount of the employee's withholding obligation is usually deducted either from reimbursements for the moving expenses at the time of reimbursement or from the employee's salary. (See Treasury Fiscal Requirements Manual for Federal Agencies.)

d. Payment of a WTA established herein will offset deductions for the Federal income tax withholding on moving expense reimbursements and on the WTA itself, from the employee's moving expense reimbursements or from salary.

e. The total amount of the RIT allowance can be computed after the end of Year 1 as soon as the earned income level, income tax filing status, total covered taxable reimbursements, and the applicable marginal tax rates can be determined. Employee claims for the RIT allowance should be submitted in accordance with this regulation and the employing agency's procedures.

f. Procedures are prescribed in 2–11.7 and 2–11.8 for computation and payment of the WTA and the RIT allowance. These procedures are built on existing fiscal procedures and IRS regulations regarding reporting of employee income from reimbursements and withholding of taxes on supplemental wages.

2–11.7. Procedures for determining the WTA in Year 1.

a. *General rules.* The WTA is designed to cover only the employee's withholding tax obligation for Federal income taxes on income resulting from covered moving expense reimbursements. (See definition in 2–11.5c.) Other withholding tax obligations, if any, such as for social security taxes or for State and/or local income taxes on income resulting from moving expense reimbursements shall not be included in the calculation of the WTA payment. The amount of the WTA is equal to the Federal income tax withholding obligation incurred by the employee on covered moving expense reimbursements (which are not offset by deductible moving expenses) and on the WTA itself. Each time covered moving expense reimbursements are paid to or on behalf of the employee, the WTA shall be calculated, accounted for, and

reported as provided in b through g, below.

b. *Determination of amount of reimbursement subject to withholding.* Under IRS regulations, income resulting from reimbursements for nondeductible moving expenses is subject to withholding of Federal income taxes. (See IRS Publication 521, "Moving Expenses.") There are some moving expenses which may be reimbursed but are not covered taxable reimbursements (see definition in 2–11.5d) for purposes of the WTA and RIT allowance calculations, such as nontemporary storage of household goods. (See exclusions in 2–11.4.) Therefore, the actual amount of the covered taxable reimbursements may be different than the amount of nondeductible moving expenses subject to Federal income tax withholding. Because the difference in these amounts should not be substantial, the amount of nondeductible moving expenses subject to Federal income tax withholding, as determined by the agency pursuant to IRS regulations, may be used in calculating the WTA. (Note that the RIT calculation procedure in 2–11.8 requires determination of covered taxable reimbursements.)

c. *Determination of Federal withholding tax rate (FWTR).* Because moving expense reimbursements constitute supplemental wages for Federal income tax purposes, the 20 percent flat rate of withholding is generally applicable to income generated by such reimbursements. The 20 percent rate should be used in calculating the WTA unless under an agency's internal fiscal (withholding) procedures a different withholding rate is used pursuant to IRS tax regulations. In such cases, the applicable withholding rate shall be substituted for the 20 percent rate in the calculation shown in d, below.

d. *Calculation of the WTA.* The WTA is calculated by substituting the amounts determined in 2–11.7b and c, above, into the WTA gross-up formula shown below:

$$\text{Formula: } \frac{Y}{} = \frac{X}{1-X} \text{ (N)}$$

where:

Y=WTA
X=FWTR (generally, 20 percent)
N=nondeductible moving expenses/ covered taxable reimbursements

Example:

If X=20 percent
N=$21,800

$$\text{Then } \frac{Y}{} = \frac{.20}{1.00-.20} \text{ ($21,800)}$$

Y=.25 ($21,800)
Y=$5,450

e. *WTA payment and employee agreement for repayment.* (1) The WTA may be calculated several times within Year 1 if reimbursements for moving expenses are made on more than one travel voucher. Each time an employee is reimbursed for moving expenses which are subject to Federal tax withholding in accordance with the IRS regulations, the WTA will be calculated and paid unless the employee fails to comply with the requirements in (2), below.

(2) The employee shall be required to agree in writing to (a) repay any excess amount paid to him/her in Year 1 (see 2–11.8f(4) and 2–11.9b(3)), and (b) submit the required certified tax information and claim for his/her RIT allowance within a reasonable length of time (as determined by the agency) after the close of Year 1. Failure of the employee to comply with this requirement will preclude the agency's payment of the WTA. The entire WTA will be considered an excess payment if the RIT allowance claim is not submitted in a timely manner to settle the RIT allowance account.

f. *Determination of employee's withholding tax on WTA.* Since the amount of the WTA is considered income to the employee, it is subject to the same tax withholding requirements as all other moving expense reimbursements. See Treasury Fiscal Requirements Manual for Federal Agencies, Section 4080, Moving Expense Requirements, for withholding requirements.

g. *End of year reporting.* At the end of the year, agencies generally are required to issue IRS Form(s) W–2 for each employee showing total gross compensation (including moving expense reimbursements) and the applicable amount of Federal taxes withheld. For tax reporting purposes, the WTA is to be treated as a moving expense reimbursement. The total amount of the employee's WTA's paid during the year as well as the amount of moving expense reimbursements should be included as income on the employee's Form W–2. The Federal tax withhholding amount applicable to the moving expense reimbursements and the WTA should also be included on the employee's Form W–2. The amount of the WTA's also will be furnished to the employee along with the amount of moving expenses reimbursements on IRS Form 47892 or another itemized listing provided for the employee's use in preparing his/her tax return. (see IRS regulations for further guidance) and in claiming the RIT allowance as provided in 2–11.8.

2–11.8. Rules and procedures for determining the RIT allowance in Year 2.

a. *Summary/overview of procedures.* The RIT allowance will be calculated and claimed in Year 2. (See definition in 2–11.5f.) This can be accomplished, as soon as the employee can determine earned income (as defined herein), income tax filing status, covered taxable reimbursements for year 1 (see definition in 2–11.5e) and the applicable marginal tax rates. The RIT allowance is then calculated using the gross-up formular under procedures prescribed herein. Since the RIT allowance is considered income, appropriate withholding taxes on the RIT allowance are deducted and the balance constitutes the net payment to the employee. Rules, procedures, examples, and prescribed tax tables for these calculations are provided in b through h, below, and in the figures and appendices to this Part 11.

b. *General rules and assumptions.* (1) The procedures prescribed herein for calculations and payment of the RIT allowance are based on certain assumptions jointly developed by GSA and IRS, and tax tables developed by IRS. This approach avoides a potentially controversial and administratively burdensome procedure requiring the employee to furnish extensive documentation, such as certified copies of actual tax returns and reconstructed returns, in support of a claim for a RIT allowance payment. Specifically the following assumptions have been made:

(a) The employee will claim allowable moving expense deductions for the same tax year in which the corresponding moving expense reimbursements are included in income;

(b) Changes to the IRC, applicable to the 1987 and subsequent tax years, require that allowable moving expense deductions must be taken as an itemized deduction from gross income rather than as an adjustment to gross income as in previous tax years. It is assumed that employees will receive the benefit of allowable moving expense deductions to offset income either by itemizing their moving expense deductions or through the increased standard deductions.

(c) Prior to the Tax Reform Act of 1986, it was assumed that the employee's (and spouse's, if a joint return is filed) earned income, filing status, and CMTR determined for Year 1

(and used in determining the RIT allowance in Year 2) would remain the same or would not be substantially different in the second and subsequent tax years. However, the Tax Reform act of 1986 substantially changed the Federal tax rates. Until the transition to the new tax rates is completed, it is necessary to compute a separate CMTR for Year 1 and for Year 2. (See e, below.) The forumla for calculating any RIT allowances to be paid in 1988, which is unchanged from 1987, is shown in f, below. It is assumed that within the accuracy of the calculation, the State and local tax rates for Year 1 and Year 2 will remain the same or will not be substantially different. Therefore, the State and local tax rates for Year 1 shall be used in calculating the CMTR for Year 2.

(2) The prescribed procedures which yield an estimate of an employee's additional tax liability due to moving expense reimbursements are to be used uniformly. They are not to be adjusted to accomodate an employee's unique circumstance which may differ from the assumed circumstances stated in (1), above.

(3) An adjustment of the RIT allowance paid in Year 2 for the covered taxable reimbursements received in Year 1 is required if the tax information certified to on the RIT allowance claim is different than that shown on the actual Federal tax return filed with IRS for Year 1 or changed for any reason after filing of the tax return, so as to affect the CMTR's used in the RIT allowance calculation. (See 2–11.10 for claims procedures.

c. *Determination of covered taxable reimbursements.* (1) Generally, the amount of the covered taxable reimbursements is the difference between (a) the amount of covered moving expense reimbursements for the allowances listed in 2–11.3 that was included in the employee's income in Year 1, and (b) the maximum amount of allowable moving expenses that may be claimed as a moving expense deduction by the employee on his/her Federal tax return under IRS tax regulations to offset the income resulting from moving expense reimbursements for Year 1. The covered taxable reimbursements will be determined as if the employee had itemized and deducted all allowable moving expense deductions. (See assumption made in 2–11.8b(1)(b).) If the employee is precluded from claiming moving expense deductions because he/she does not meet IRS requirements for the distance test, then the amount of covered taxable reimbursements is the same as the amount of covered moving expense reimbursements. (See 2–11.5d.)

(2) For purposes of calculating the RIT allowance, the following special rules apply to the determination of moving expense deductions to offset moving expenses reimbursements reported as income:

(a) The total amount of reimbursement (which was reported as income) for the expenses of en route travel for the employee and family (see 2–11.3a) and transportation (including up to 30 days temporary storage) of household goods (see 2–11.3b) to the new official station shall be used as a moving expense deduction. (See also 2–11.4e and f.)

(b) The total amount of reimbursement for a househunting trip, temporary quarters (up to 30 days at new station) and real estate transaction expenses (see 2–11.3e, f, g, and i), up to the maximum allowable deduction under IRS tax regulations, shall be used as a moving expense deduction. For example, an employee and spouse filing a joint return and residing in the same household at the end of the tax year may deduct up to $3,000 for these expenses. (No more than $1,500 of the $3,000 may be claimed for a househunting trip and temporary quarters expenses combined.) If the employee was reimbursed $1,350 for a househunting trip and temporary quarters expenses and $9,000 for real estate expenses, the moving expense deudctions would be $1,350 for the househunting trip and temporary quarters expenses and $1,650 for real estate expenses. If the employee's reimbursement was $1,850 for the househunting trip and temporary quarters expenses and $9,000 for real estate expenses, the moving expense deductions would be $1,500 for the househunting trip and temporary quarters expenses and $1,500 for real estate expenses. If the employee had no reimbursement for a househunting trip and temporary quarters, the full $3,000 would be applied to the $9,000 reimbursement for real estate expenses. (See IRS Publication 521, "Moving Expenses," for these and other maximums which vary by situation and filing status.)

(3) Procedures and examples are provided herein as if all moving expense reimbursements are received in one year with all moving expense deductions applied in that same year to arrive at the covered taxable reimbursements. However, when reimbursements span more than one year, the amount of covered taxable reimbursements must be determined separately for each reimbursement year (Year 1). The maximum moving expense deductions apply to the entire move. Under IRS tax regulations the employee has some discretion as to when he/she claims these deductions (e.g., in the year of the move when the expense was paid or in the year of reimbursement, if these actions do not occur in the same year). However, for purposes of the RIT allowance procedures, the moving expense deductions will be applied in the year that the corresponding reimbursement is made. For example, if an employee incurred and was reimbursed $1,000 for a househunting trip and temporary quarters in 1986 and an additional $1,000 for temporary quarters in 1987, this employee, according to his/her particular situation and tax filing status, may deduct $1,500 of these expenses in moving expense deductions. In calculating the RIT allowance for 1986, $1,000 of the $1,500 deduction is used to offset the $1,000 reimbursement in 1986 resulting in zero covered taxable reimbursements for the househunting trip and temporary quarters for 1986. The remaining $500 (balance of the $1,500 not used in determining covered taxable reimbursements for 1986) will be used to offset the $1,000 temporary quarters reimbursement in 1987 (second Year 1), leaving $500 of the temporary quarters reimbursement as a covered taxable reimbursement for 1987.

(4) Although the WTA amount is included in income (see 2–11.7), it shall not be included in the amount of covered taxable reimbursements. Under the procedures and formulas established herein, the proper amount of the RIT allowance is calculated using the RIT gross-up formula with the WTA and any prior RIT allowance payments excluded from covered taxable reimbursements.

(5) Agencies are cautioned that there may be moving expenses reimbursed to the employee that are not covered by the RIT allowance. (See exclusions in 2–11.4; also see discussion in 2–11.7 regarding covered taxable reimbursements versus nondeductible expenses.)

(6) An example showing how to calculate covered taxable reimbursements is illustrated in Figure 2–11.8a.

d. *Determination of income level and filing status.* In order to determine the CMTR's needed to calculate the RIT allowance, the employee must determine the appropriate amount of earned income (as prescribed herein) that was or will be reported on his/her Federal tax return for the tax year in which the covered taxable reimbursements were received (Year 1).

Such amount will also include the spouse's earned income if a joint filing status is claimed. For purposes of this regulation, appropriate earned income shall include only the amount of gross compensation reported on IRS Form(s) W–2, and, if applicable, the net earnings (or loss) from self-employment income as shown on Schedule SE of IRS Form 1040. (See 2–11.5h.) (Note that moving expense reimbursements including the WTA amounts and any RIT allowance paid for a prior Year 1 are to be included in earned income and should be shown as income on the Form W–2; if they are not, other appropriate documentation shall be furnished by the agency.) (See 2–11.7g.) the amount of earned income as determined under this paragraph and the tax filing status (for example, from lines 1 through 5 on the 1987 IRS Form 1040) shall be contained in a certified statement on, or attached to, the voucher claiming the RIT allowance. (See 2–11.10.) If a joint filing status is claimed and the spouse's earned income is included, the spouse must sign the certified statement. If the spouse does not sign the statement, earned income will include only the employee's earned income and the RIT allowance will be calculated on that basis. This condition will not apply if an employee is allowed, under IRS rules, to file a joint return as a surviving spouse.

e. *Determination of the CMTR's.* The gross-up formula used to calculate the RIT allowance in f, below, requires the use of two CMTR's—one for Year 1 in which reimbursements were received and the other for Year 2 in which the RIT allowance is paid. CMTR's are single tax rates calculated to represent the Federal, State, and/or local income tax rates applicable to the earned income determined in d, above, for Year 1. The CMTR's will be determined as provided in (1) through (4), below.

(1) *Federal marginal tax rates.* The Federal marginal tax rates for Year 1 and Year 2 are determined by using the income level and filing status determined under 2–11.8d and contained in the certified statement by the employee (or employee and spouse) on the RIT allowance claim, and applying the prescribed Federal tax table contained in appendices 2–11.A and C. For example, if the income level for the 1987 tax year (Year 1) was $65,000 for a married employee filing a Federal joint return, the Federal marginal tax rate would be 35 percent for Year 1 (1987) (see appendix 2–11.A) and 28 percent for Year 2 (1988) (see appendix 2–11.C). These rates would be used regardless of how much of the $65,000 was attributable to reimbursement for the employee's relocation expenses. (Note that these marginal rates are different from the withholding tax rate used for the WTA.) If the employee incurs only Federal income tax (i.e., there are no State or local taxes), the Federal marginal tax rates determined from appendices 2–11.A and C are the CMTR's to be used in the RIT gross-up formula provided in 2–11.8f. In such cases, the provisions of (2) and (3), below, do not apply.

(2) *State marginal tax rate.* (a) If the employee incurs an additional State income tax (see definition in 2–11.5a) liability as a result of moving expense reimbursements, the appropriate State tax table in appendix 2–11.B is to be used to determine the applicable State marginal tax rate that will be substituted into the formula for determining the CMTR for both Year 1 and Year 2. The appropriate State tax table will be the one that corresponds to the tax year in which the reimbursements are paid to the employee (Year 1). The income level determined in 2–11.8d for Federal taxes shall be used to identify the appropriate income bracket in the State tax table. The applicable State marginal tax rate is obtained from the selected income bracket column for the State where the employee is required to pay State income tax on moving expense reimbursements. the tax rates shown in the table apply to all employees regardless of their filing status, except where a separate rate is shown for a single filing status.

(b) The lowest income bracket shown in the State tax tables in appendix 2–11.B is $20,000–$24,999. In cases where the employee's (employee's and spouse's, if filing jointly) earned income as determined under 2–11.8d is less than this income bracket, an appropriate State marginal tax rate shall be established by the employing agency from the applicable State tax code or regulations issued pursuant thereto. Such State marginal tax rate shall be representative of the earned income level in question but in no case more than the marginal tax rate established in appendix 2–11.B for the $20,000–$24,999 income bracket for the particular State in which an additional tax obligation has been incurred.

(c) The prescribed State marginal tax rates generally are expressed as a *percent of taxable income.* However, if the applicable State marginal tax rate is stated as a *percentage* of the *Federal income tax liability,* the State tax rate must be converted to a *percent of taxable income* to be used in the CMTR formulas in 2–11.8e(4). This is accomplished by multiplying the applicable Federal tax rate for Year 1 by the applicable State tax rate. For example, if the Federal tax rate is 35 percent for Year 1 and the State tax rate is 25 percent of the *Federal income tax liability,* the State tax rate stated as a *percent of taxable income* would be 8.75 percent. The State tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(d) An employee may incur a State income tax liability on moving expense reimbursements in more than one State at the same or different marginal tax rates. Nevertheless, a single State marginal tax rate must be determined for use in the CMTR formulas in 2–11.8e(4). The following general rules shall apply in determining the applicable single rate.

(i) In the tax year during which the transfer actually takes place, the employee may incur a State income tax obligation at both the old and new location. However, most moving expense reimbursements will be taxed at the new location. However, most moving expense reimbursements will be taxed at the new location. Although the employee may receive some reimbursements (e.g., for a househunting trip) prior to the actual transfer which would be credited as income at the old location, these types of expenses generally are tax deductible and would not generate an additional State tax liability for the employee. In addition, procedures inherent in the travel voucher reimbursement system tend to cause most reimbursements which may be taxable to occur after the actual transfer. Therefore, the State marginal tax rate determined under 2–11.8e(2) (a) through (c) for the new location will be used in the CMTR formulas.

(ii) There may be other situations where the employee is subject to taxes on moving expense reimbursements in two States, for instance, in one State because State residency and in another because a particular State taxes income earned within its jurisdiction irrespective of whether the employee is a resident. If the two States involved recognize such situations by allowing an adjustment or credit for taxes paid to the other State, the employee's State marginal tax rate for the State where income tax on moving expense reimbursements is actually paid will be determined and used in the CMTR formulas. However, in those situations where there is in fact double taxation on income from moving expense reimbursements and the taxes imposed by both States qualify as a State income

tax (as defined in 2–11.5a), the sum of the State marginal tax rates for the two States as determined under 2–11.8e(2)(a) through (c) shall be used in the CMTR formulas.

(3) *Local marginal tax rate.* Because of the impracticality of establishing a single marginal tax rate table for local income taxes that could be applied uniformly on a nationwide basis, appropriate local marginal tax rates shall be determined as provided in (a) through (c), below.

(a) If the employee incurs an additional local income tax (see definition 2–11.5b) liability as a result of moving expense reimbursements, he/she shall certify to such fact when claiming the RIT allowance (see certification statement in 2–11.10) by specifying the name of the locality imposing the income tax and the applicable marginal tax rate determined from the actual marginal tax rate table or schedule prescribed by the taxing locality. The marginal tax rate shall be the one applicable to the taxable income portion of the amount of earned income determined under 2–11.8d for the employee (and spouse, if filing jointly). The same tax rate shall be used in calculating the CMTR for both Year 1 and Year 2. The employing agency shall establish procedures to determine whether the employee certified local marginal tax rate is appropriate for the employee's income level and filing status and approve its use in the CMTR formulas. (See also 2–11.10b(2).)

(b) If the local marginal tax rate is stated as a percentage of Federal or State income tax liability, such rate must be converted to a percent of taxable income for use in the CMTR formulas. This is accomplished by multiplying the applicable Federal or State tax rate for Year 1 as determined in 2–11.8e (1) or (2) by the applicable local tax rate. For example, if the State tax rate for Year 1 is 6 percent and the local tax rate is 50 percent of State income tax liability, the local tax rate stated as a percentage of taxable income would be 3 percent. The local tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(c) The situations described in 2–11.8e(2)(d) with respect to State income taxes may also be encountered with local income taxes. If such situations do occur, the rules prescribed for determining the single State marginal tax rate shall also be applied to determine the single local marginal tax rate for use in the CMTR formulas.

(4) *Calculation of the CMTR's.* As stated above, the gross-up formula for calculating the RIT allowance requires the use of two CMTR's. However, the required CMTR's cannot be calculated by merely adding the Federal, State, and local marginal tax rates together because of the deductibility of State and local income taxes from income for Federal income tax purposes. The State tax tables prescribed in appendix 2–11.B are designed to use the same income amount as that determined for the Federal taxes, which reflects, among other things, State and local tax deductions. The formulas prescribed below for calculating the CMTR's are designed to adjust the State and local tax rates to compensate for their deductibility from income for Federal tax purposes.

(a) *Calculation of the CMTR for Year 1.* The following formula shall be used to calculate the CMTR for Year 1.

CMTR Formula: $X=F+(1-F)S+(1-F)L$

where:
X=CMTR for Year 1
F=Federal tax rate for Year 1
S=State tax rate for Year 1
L=local tax rate for Year 1

(i) *Federal, State, and local taxes incurred.* If the employee incurs Federal, State, and local income taxes on moving expense reimbursements, the CMTR formula may be solved as follows:

Example:
If:
F=35 percent of income
S=6 percent of income
L=2 percent of income
Then:
$X=.35+(1.00-.35).06+(1.00-.35).02$
$X=.4020$

(ii) *Federal and State income taxes only.* If the employee incurs tax liability on moving expense reimbursements for Federal and State income taxes but none for local income tax, the value of "L" is zero and the CMTR formula may be solved as follows:

Example:
If:
F=35 percent of income
S=6 percent of income
L=Zero
Then:
$X=.35+(1.00-.35).06$
$X=.3890$

(iii) *Federal and local income taxes only.* If the employee incurs a tax liability on moving expense reimbursements for Federal and local income taxes but none for State income tax, the value of "S" is zero and the CMTR formula may be solved as follows:

Example:
If:
F=35 percent of income
S=Zero
L=2 percent of income
Then:
$X=.35+(1.00-.35).02$
$X=.3630$

(b) *Calculation of the CMTR for Year 2.* The calculation of the CMTR for Year 2 is the same as described in (a), above, for Year 1 except that the Federal tax rate for Year 2 is used in place of the Federal tax rate for Year 1. State and local tax rates remain the same as for Year 1. The following formula shall be used to determine the CMTR for Year 2:

CMTR Formula: $W=F+(1-F)S+(1-F)L$

where:
W=CMTR for Year 2
F=Federal tax rate for Year 2
S=State tax rate for Year 1
L=local tax rate for Year 1

f. *Determination of the RIT allowance.* The RIT allowance to cover the tax liability on additional income resulting from the covered taxable reimbursements received in Year 1 is calculated in Year 2 as provided below:

(1) The RIT allowance is calculated by substituting the amount of covered taxable reimbursements for Year 1 (see 2–11.8c), the CMTR's for Year 1 and Year 2, and the total amount of the WTA's paid in Year 1 into the gross-up formula as follows:

Formula:

$$Z=\frac{X}{1-W}(R)-\frac{1-X}{1-W}(Y)$$

where:
Z=RIT allowance payable in Year 2
X=CMTR for Year 1
W=CMTR for Year 2
R=covered taxable reimbursements
Y=total WTA's paid in Year 1

Example:
If:
X=.4020
W=.3376
R=$21,800
Y=$5,450
Then:

$$Z=\frac{.4020}{1.00-.3376}(\$21.800)-\frac{1.00-.4020}{1.00-.3376}(\$5,450)$$

$Z=.6069\ (\$21,800)-.9028(\$5,450)$
$Z=\$13,230.42-\$4,920.26$
$Z=\$8,310.16$

(2) There may be instances when a WTA was not paid in Year 1 at the time moving expense reimbursements were made. In cases where there is no WTA

to be deducted, the value of "Y" is zero and the formula stated in (1), above, for calculating the amount of the RIT allowance (Z) due the employee in Year 2 may be solved as shown in the following example:

Example:
If:
X=.4020
W=.3376
R=$21,800
Y=Zero
Then:

$$Z = \frac{.4020}{1.00 - .3376} ($21,800)$$

Z=.6069 ($21,800)
Z=$13,230.42

(3) If the amount of the RIT allowance is greater than zero, it is payable to the employee on the travel voucher as a relocation or moving expense allowance. The RIT allowance amount is included in the employee's gross income for Year 2 and, therefore, subject to appropriate withholding taxes. (See net payment to employee in 2–11.8g.) The RIT allowance amount will be reported on IRS Form W–2 for Year 2 (including applicable income tax withholding amounts) and on IRS Form 4782 for the employee's information.

(4) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government. (See 2–11.7e(2) and 2–11.9b).

(5) Any changes to the employee's income level or filing status for Year 1 that would affect the marginal tax rates (Federal, State, or local) used in calculating the RIT allowance must be reported to the agency by the employee as provided in 2–11.9b(2). (See also 2–11.10 for certified statement regarding these changes.)

g. *Determination of the net payment due employee in Year 2.* Since the amount of the RIT allowance is income to the employee in Year 2, it is subject to the same tax withholding requirements as all other moving expense reimbursements. Agencies should determine the appropriate amounts for withholding taxes under their internal tax withholding procedures. The amount of withholding taxes is deducted from the RIT allowance to arrive at the net payment to the employee.

h. *Summary example.* The procedures provided in a through f, above, for calculating the RIT allowance and in 2–11.7 for calculating the WTA are summarized and illustrated for a hypothetical situation in Figure 2–11.8b.

2–11.9. Responsibilities.

a. *Agency.* Finance offices will calculate the amount of the gross-up for the WTA in Year 1 in accordance with procedures outlined herein and credit this amount to the employee at the time of reimbursement as provided in 2–11.7e. The WTA will be reflected on the employee's Form W–2 for Year 1. The RIT allowance may be calculated in Year 2 either by the employee or by the agency finance office based on information provided by the employee on the voucher, as directed by the agency's implementing policies and procedures. In addition, agencies shall prescribe appropriate and necessary implementing procedures as provided elsewhere in this Part 11.

b. *Employee.* (1) The employee is required to submit a claim for the RIT allowance and to file the tax information for Year 1 specified in 2–11.10 with his/her agency in Year 2, regardless of whether any additional reimbursement for the RIT allowance is owed the employee. (See 2–11.7e for employee agreement.)

(2) If any action occurs (i.e., amended tax return, tax audit, etc.) that would change the information provided in Year 2 by the employee to his/her agency for use in calculating the RIT allowance due the employee for Year 1 taxes, this information must be provided by the employee to his/her agency under procedures prescribed by the agency. (See 2–11.10.)

(3) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government. (See 2–11.7e(2) and 2–11.8f(4).)

2–11.10 Claims for payment and supporting documentation and verification.

a. *Claims forms.* Claims for payment of the RIT allowance shall be submitted by the employee in Year 2 on SF 1012 (Travel Voucher) or other authorized travel voucher form. When claiming payment for the RIT allowance, the employee shall furnish and certify to certain tax information that has been or will be shown on his/her actually prepared tax returns. The spouse must also sign statement if joint filing status is claimed and spouse's income is included on statement. This information shall be contained in a certified statement on, or attached to, the SF 1012 reading essentially as follows:

I certify that the following information, which is to be used in calculating the RIT allowance to which I am entitled, has been (or will be) shown on the income tax returns filed (or to be filed) by me (or by my spouse and me) with the applicable Federal, State, and local (specify which) tax authorities for the 198__ tax year.

—Gross compensation as shown on attached IRS Form(s) W–2 and, if applicable, net earnings (or loss) from self-employment income shown on attached Schedule SE (Form 1040):

	Form(s) W–2	Schedule SE
Employee	$	$
Spouse (if filing jointly)	$	$
Total (Both columns)	$	$

—Filing status: _____

(Specify one of the filing status items that was (or will be) claimed on IRS Form 1040.)

—Marginal tax rates from FTR appendices 2–11.A, B, C and local tax tables derived under procedures prescribed in FTR Part 2–11:

Federal for Year 1 _____
Federal for Year 2 _____
State (specify which): _____
Local (specify which): _____

The above information is true and accurate to the best of my knowledge. I (we) agree to notify the appropriate agency official of any changes to the above (i.e., from amended tax returns, tax audit, etc.) so that appropriate adjustments to the RIT allowance can be made. The required supporting documents are attached. Additional documentation will be furnished if requested.

I (we) further agree that if the 12-month service agreement required by 2–1.5a(1) is violated, the total amount of the RIT allowance will become a debt due the United States Government and will be repaid according to agency procedures pursuant to FTR 2–11.11.

Employee's signature Date

Spouse's signature (if filing jointly) Date

Note: If a joint filing status is claimed and spouse's income is included, the spouse must sign the statement. If the spouse does not sign the document, earned income will include only the employee's earned income. This condition will not apply if an employee is allowed, under IRS rules, to file a joint return as a surviving spouse. (See FTR 2–11.8d.)

b. *Supporting documentation/verification.* The claim for the RIT allowance shall be supported by documentation attached to the voucher and by verification of State and local tax obligations as provided below:

(1) Copies of the appropriate IRS Forms W–2 and, if applicable, the completed IRS Schedule SE (Form 1040) shall be attached to the voucher to substantiate the income amounts shown in the certified statement. Employee (and spouse, if filing jointly) must agree to provide additional documentation to verify income amounts, filing status, and State and local income tax obligations if requested by the agency.

(2) In order to determine or verify whether a particular State or local tax authority imposes a tax on moving expense reimbursements, it is incumbent upon the appropriate agency officials to become familiar with the State and local tax laws that affect their transferring employees. In cases where the taxability of moving expense reimbursements is not clear, an agency may pay a RIT allowance which reflects only those State and local tax obligations that are clearly imposed under State and local tax law. Once the questionable State or local tax obligations are resolved, agencies may recompute the RIT allowance and make appropriate payment adjustments.

c. *Fraudulent claims.* A claim against the United States is forfeited if the claimant defrauds or attempts to defraud the Government in connection therewith (28 U.S.C. 2514). In addition, there are two criminal provisions under which severe penalties may be imposed on an employee who knowingly presents a false, fictitious, or fraudulent claim against the United States (18 U.S.C. 287 and 1001). The employee's claim for payment of the RIT allowance shall accurately reflect the facts involved in every instance so that any violation of these provisions will be avoided.

2–11.11. Violation of service agreement.

In the event the employee violates the terms of the service agreement required under 2–1.5a(1), no part of the RIT allowance or the WTA will be paid, and any amounts paid prior to such violation shall be a debt due the United States until they are repaid by the employee.

2–11.12. Advance of funds.

No advance of funds is authorized in connection with the allowance provided in this part.

2–11.13. Source references.

The following references or publications have been used as source material for this Part 11.

a. Internal Revenue Code (IRC), section 164(a)(3) (26 U.S.C. 164(a)(3)) pertaining to the deductibility of State and local income taxes, and section 217 (26 U.S.C. 217), pertaining to moving expenses.

b. Internal Revenue Service Publication 521, "Moving Expenses."

c. Internal Revenue Service, Circular E, "Employer's Tax Guide."

d. Department of the Treasury Fiscal Requirements Manual for Federal Agencies, ITFRM 3–5000.

e. 31 CFR 215.2 (5 U.S.C. 5516, 5517, and 5520).

EXAMPLE 1.—CALCULATION OF COVERED TAXABLE REIMBURSEMENTS

[The following example shows how to calculate covered taxable reimbursements as provided in FTR 2–11.8. Column (a) shows hypothetical moving expense reimbursements. Column (b) shows Federal moving expense deductions for employee and spouse filing a joint return and residing together at the end of the tax year (see footnote [5] below). Column (c) shows the balance of the covered reimbursements in column (a) which have not been offset by moving expense deductions in column (b). Amounts shown are for illustration purposes only and should not be construed in any way to represent actual, average, or typical moving costs.]

Covered allowances (FTR 2–11.3)			Amount paid/ reimbursed (a) [1]	Maximum moving expense deduction (b) [2]	Amount of covered taxable reimbursements (c) = (a) – (b) [3]
1. Travel and transportation expenses between duty stations			[4] $1,150	[4] $1,150	[4] $0
2. Transportation and 30 days temporary storage of household goods (HHG's)			[4] 5,100	[4] 5,100	[4] 0
3. Temporary storage of HHG's not included on line 2, and/or nontemporary storage (see 2–11.3c)			1,100	0	1,100
4. Mobile home movement instead of HHG's			0	0	0
5. Miscellaneous expense allowance			700	0	700
6. Househunting trip		$1,500			
7. Temporary quarters, 30 days, new station		2,550			
8. Total lines 6 and 7			4,100		
9. Enter lesser of line 8 or $1,500 as deductible amount in col. b; [5]				1,500	
10. Enter balance of line 8 minus line 9					2,600
11. Temporary quarters in excess of line 7			1,900	0	1,900
12. Real estate transactions resulting from:					
(a) Sale expenses	$13,500				
(b) Purchase expenses	3,500				
(c) Unexpired lease	0				
(d) Relocation services [6]	0				
13. Total of items (a) through (d), line 12			17,000		
14. Enter lesser of line 13 or $3,000 less deductible amount used on line 9 [5]				1,500	
15. Balance of line 13 minus 14					15,500
16. Relocation services not included on line 12(d) [6]			[6] 0	[6] 0	[6] 0
17. Total column (a), (b), and (c)			31,050	[7] 9,250	[8] 21,800
18. Total amount of WTA's paid in Year 1			[9] 5,450		
19. Total lines 17 and 18, column (a)			[10] 36,500		

Figure 2–11.8a (Part 1 of 2). Illustration of Example for Calculation of Covered Taxable Reimbursements in Year 2.

[1] Enter in column (a) the amounts of reimbursed expenses for the allowances listed in FTR 2–11.3.

[2] Enter in column (b) the maximum amounts of the reimbursed expenses in column (a) which are deductible moving expenses. (See FTR 2–11.8c(2); also see footnote [4].)

[3] Enter in column (c) the balance of column (a) minus column (b). (See FTR 2–11.8c).

[4] The amount entered in column (b) for lines 1 and 2 should be the same as that entered in column (a). (See FTR 2–11.8c(2)(a).) Column (c) will be zero.

[5] Limits may vary according to filing status, etc. See page 5 of IRS Publication 521, Moving Expenses.

[6] In this example, relocation services were not used—employee declined (see FTR 2–12 and employing agency policy). However, if relocation services were used, any amounts paid to the relocation service company that are determined to be income to the employee (see FTR 2–11.3i, 2–11.4a, and 2–12.7) and covered by the RIT allowance would be entered on lines 12(d) and 16, column (a), as appropriate. In such cases, the amount shown in column (c) as a covered taxable

reimbursement would depend on whether any part of the amount in column (a) is a moving expense deduction in column (b). All amounts included in column (a) may not be deductible and there are limitations as to what can be included as a covered reimbursement under 2-11.3i.

[7] In an actual situation, the total moving expense deductions calculated for purposes of the RIT allowance may differ from the total moving expense deductions shown on the employee's IRS Form 3903 because of relocation expenses incurred which are not paid for or reimbursed by the Government but which may be claimed as a moving expense deduction for Federal tax purposes (e.g., extra valuation insurance for household goods shipments).

[8] The amount on line 17, column (c), is the amount of covered taxable reimbursements to be used in the gross-up formula for the RIT allowance.

[9] Enter total amount of all WTA's paid in Year 1 on line 18, column (a) only. This amount is an estimated partial payment of the RIT allowance. It is not included in the amount of covered taxable reimbursements determined for calculation of the RIT allowance. (See FTR 2-11.8c(4).)

[10] The total amount of moving expenses paid or reimbursed determined for the RIT allowance procedures may differ from the amount shown on the IRS Form 4782 because of moving expenses paid or reimbursed which are not covered by the RIT allowance (see exclusions in FTR 2-11.4).

Figure 2-11.8a (Part 2 of 2). Illustration of Example for Calculation of Covered Taxable Reimbursements in Year 2. (Footnotes)

Example 2.—Summary of RIT Allowance Procedures

Year 1: In 1987, the employee received $31,050 in covered moving expense reimbursements. After subtracting $9,250 of deductible moving expenses, $21,800 of the reimbursements (nondeductible moving expenses) were subject to Federal tax withholding. This example assumes that all reimbursements were paid on one voucher.

Apply WTA formula:

$$Y = \frac{X}{1-X} (N)$$

Where:

Y=WTA
X=Federal withholding tax rate (.20)
N=nondeductible moving expenses/covered taxable reimbursements ($21,800)

Then:

$$Y = \frac{.20}{21.00-.20} ($21,800)$$

Y=$5,450

Compute net payment to employee in Year 1:

Total covered moving expense reimbursement in Year 1	$31,050
Less deductible moving expenses	−9,250
Nondeductible covered moving expenses subject to withholding	21,800
Plus WTA on $21,800	+ 5,450
Amount subject to withholding	[1] 27,250

[1] The WTA allowance is treated as a moving expense reimbursement for tax withholding purposes. After subtracting the applicable withholding amounts the balance is the net payment due the employee.

Year 2: In 1988, the amount of the RIT allowance is determined on the basis of covered reimbursements in Year 1. Assume that $21,800 of nondeductible moving expenses is the same as the covered taxable reimbursements. Also, assume that employee and spouse (married, filing jointly) have combined earned income of $65,000. Thus, Federal marginal tax rates would be 35% for Year 1 (from app. 2-11.A) and 28% for Year 2 (from app. 2-11.C). Also assume the applicable State and local marginal tax rates are 6% and 2%, respectively, of taxable income.

Apply CMTR formula for Year 1:

X=F+(1−F)S+(1−F)L

Where:

X=CMTR for Year 1
F=Federal tax rate for Year 1 (.35)
S=State tax rate for Year 1 (.06)
L=local tax rate for Year 1 (.02)

Then:

X=.35+(1.00−.35).06+(1.00−.35).02
X=.35+.0390+.0130
X=.4020

Apply CMTR formula for Year 2:

W=F+(1-F)S+(1-F)L

Where:

W=CMTR for Year 2
F=Federal tax rate for Year 2 (.28)
S=State tax rate for Year 1 (.06)
L=local tax rate for Year 1 (.02)

Then:

W=.28+(1.00−.28).06+(1.00−.28).02
W=.28+.0432+.0144
W=.3376

Apply RIT gross-up formula:

$$Z = \frac{X}{1-W} (R) - \frac{1-X}{1-W} (Y)$$

Where:

Z=RIT allowance payable in Year 2
X=CMTR for Year 1 (.4020)
W=CMTR for Year 2 (.3376)
R=covered taxable reimbursements for Year 1 ($21,800)
Y=WTA paid in Year 1 ($5,450)

Then:

$$Z = \frac{.4020}{1.00-.3376} ($21,800) - \frac{1.00-.4020}{1.00-.3376} ($5,450)$$

Z=.6069 ($21,800)−.9028 ($5,450)
Z=$13,230.42−$4,920.26
Z=$8,310.16[1] [2]

[1] See FTR 2-11.8f(2) if no WTA is involved.

[2] The RIT allowance is treated as a moving expense reimbursement for tax withholding purposes. After subtracting the applicable withholding amounts the balance is the net payment due the employee.

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1987

[The following table is to used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in FTR 2-11.8e(1). This table is to be used for employees whose Year 1 occurred during calendar year 1987.]

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
11%	$4,650	$6,481	$7,763	$10,309	$10,400	$13,719	$5,811	$7,081
15%	6,481	21,979	10,309	31,379	13,719	40,020	7,081	19,602
28%	21,979	33,433	31,379	47,903	40,020	58,705	19,602	31,572
35%	33,433	58,810	47,903	88,015	58,705	101,432	31,572	54,120
38.5%	58,810	.....	88,015	.....	101,432	.....	54,120	.....

Appendix 2-11.A Federal Tax Table for RIT Allowance.

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1987

[The following table (pages 13 thru 16) is to be used to determine State marginal tax rates for calculation of the RIT allowance as prescribed IN FTR 2-11.8e(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1987.]

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column.[1] [2]			
	$20,000-24,999	$25,000-49,999	$50,000-74,999	$75,000 & OVER
1. Alabama	5%	5%	5%	5%
2. Alaska	0	0	0	0
3. Arizona	7	8	8	8
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	9.3	9.3	9.3
If single status [3]	8	9.3	9.3	9.3
6. Colorado	5	5	5	5
7. Connecticut	0	0	0	0
8. Delaware	6.1	8.2	8.8	8.8
9. District of Columbia	8	10	10	10
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8.25	9.75	10	10
If single status [3]	9.75	10	10	10
13. Idaho	7.8	8.2	8.2	8.2
14. Illinois	2.5	2.5	2.5	2.5
15. Indiana	3.2	3.2	3.2	3.2
16. Iowa	7	11	12	13
17. Kansas	7.5	9	9	9
18. Kentucky	6	6	6	6
19. Louisiana	4	4	6	6
20. Maine	3	9.2	10	10
If single status [3]	9.2	10	10	10
21. Maryland	5	5	5	5
22. Massachusetts	5	5	5	5
23. Michigan	4.6	4.6	4.6	4.6
24. Minnesota	8	9	9	9
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27. Montana	7	10	11	11
If single status [3]	9	10	11	11
28. Nebraska	3.2	5	5.9	5.9
If single status [3]	5	5.9	5.9	5.9
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	2	2.5	3.5	3.5
32. New Mexico	3.8	5.9	7.7	8.5
If single status [3]	5.8	7.7	8.5	8.5
33. New York	7	8.75	8.75	8.75
If single status [3]	8.75	8.75	8.75	8.75
34. North Carolina	7	7	7	7
35. North Dakota	6.67	9.33	12	12
If single status [3]	8	10.67	12	12
36. Ohio	3.004	4.506	*5.257	6.008
37. Oklahoma	4	6	6	6
If single status [3]	6	6	6	6
38. Oregon	9	9	9	9
39. Pennsylvania	2.1	2.1	2.1	2.1
40. Rhode Island	*Tax 23.46% of Federal income tax liability [4]			
41. South Carolina	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.75	7.75	7.75	7.75
46. Vermont	*Tax 25.8% of Federal income tax liability [4]			
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6	6.5
If single status [3]	4	6	6.5	6.5
50. Wisconsin	6.55	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75, etc.) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in FTR 2-11.8e(2)(b).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8e(2).

Appendix 2-11.B. State Tax Table for RIT Allowance.

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1988

[The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in FTR 2-11.8e(1). This table is to be used for employees whose Year 1 occurred during calendar years 1983, 1984, 1985, 1986, and 1987.]

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15%	$5,260	$23,920	$9,440	$34,215	$12,500	$43,410	$6,200	$21,880
28%	23,920	52,310	34,215	77,300	43,410	88,740	21,880	47,475
33%	52,310	113,370	77,300	166,910	88,740	197,820	47,475	133,415
28%	113,370		166,910		197,820		133,415	

Appendix 2-11.C. Federal Tax Table for RIT Allowance—Year 2.

[FR Doc. 88-10607 Filed 5-11-88; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Application Announcement for a Cooperative Agreement With an Organization for Promoting Perinatal Health.

AGENCY: Health Resources and Services Administration.

ACTION: Notice.

SUMMARY: This Health Resources and Services Administration (HRSA) is announcing that applications are being accepted from public or private nonprofit organizations for a cooperative agreement to promote and give national visibility to perinatal health and to the continued development and implementation of coordinated systems of perinatal care. It is expected that approximately $225,000 will be available for Fiscal Years 1988, 1989, and 1990 for a cooperative agreement to promote perinatal health, which will be entered into under the authority of section 502(a) of the Social Security Act (42 U.S.C. 702 (a)). Consistent with the statutory purpose of improving maternal and child health, the Department will review applications for funds and will fund the one which, in the Department's view, best promotes improvement for the delivery and organization of perinatal care systems.

DATE: To receive consideration, applications for this cooperative agreement must be received by the Grants Management Officer by July 11, 1988. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commerical carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

ADDRESS: Application kits (Forms PHS-5161-1 with revised facesheet DHHS Form 424 approved by OMB under control number 0348-0006) and additional guidance may be obtained from, and completed applications should be sent to Waddell Avery, Grants Management Officer, Office of Maternal and Child Health, Bureau of Maternal and Child Health and Resources Development, Health Resources and Services Administration, Parklawn Building, Room 11-A-18, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-1440.

FOR FURTHER INFORMATION CONTACT: Ann M. Koontz, Dr. P.H., Maternal and Infant Health Branch, 301 443-5720.

SUPPLEMENTARY INFORMATION: In order to qualify for the single cooperative agreement to be awarded under this announcement, an applicant must be a public or private nonprofit entity, and must satisfy the Secretary that it is able to perform each of the following functions:

(a) Develop a consultative resource group composed of representatives from public agencies, private agencies, professional and voluntary organizations, and Federal and State programs to: Examine the critical issues affecting the organization and delivery of perinatal health care and systems; develop approaches to address problems or barriers; and identify selected strategies for implementation by the project over the course of the cooperative agreement;

(b) Develop a mechanism to convene national and/or regional meetings to bring together professional and administrative leaders in perinatal care at the State level to share expertise, information, and strategies for strengthening perinatal care systems; and

(c) Participate in the development and dissemination of information and resource materials related to the activities of the project.

Review and Evaluation Criteria

Applicants will be evaluated on the basis of their relative ability, as determined by the Secretary, to perform the functions listed above, as well as additional criteria specified in the application guidance.

Federal Responsibilities

In addition to the usual monitoring and technical assistance provided when grants are awarded, under this cooperative agreement experienced Federal personnel will participate in the planning and development of all phases of this activity, including:

(a) Identification of the issues and approaches related to comprehensive, risk appropriate perinatal systems and services;

(b) Indentification of key leaders for inclusion on the resource group and for the network of State programs;

(c) Establishment of Federal contacts necessary in carrying out the project;

(d) Preparation of articles and materials for publication to assist States and communities to promote and improve perinatal systems; and

(e) Assuming the major role for technical assistance and dissemination of materials based on project activities and outcomes.

A competitive review of applications will be the basis for selecting the successful applicant for this cooperative agreement. Consideration will be given to those applicants who indicate that they can achieve the objectives of the cooperative agreement with a cost effective expenditure of funds.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45

CFR Part 74, subpart Q. The cost principles prescribed for grant recipients are: OMB Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations. PHS has elected the option provided in 48 CFR 1–31.2 of not authorizing independent research and development costs.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 13.110.

Date: April 14, 1988.

David N. Sundwall,

Administrator.

FR Doc. 88–10632 Filed 5–11–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, June 9–10, 1988, at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on June 9 from 8:30 a.m. to approximately 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 9 from approximately 9 a.m. to recess and on June 10 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, National Institutes of Health, Building 31, Room 10A06, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members, upon request.

Ms. Cynthia Sewell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, Westwood Building, Room 838, 5333 Westbard Avenue, Bethesda, Maryland 20892 (301/496–7721) will provide substantive program information, upon request.

Dated: May 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10568 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 23–24, 1988, at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on June 23, 1988, from 9 a.m. to 10 a.m. to discuss administrative matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 23 from 10 a.m. to recess; and on June 24 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information.

Dated: April 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10569 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Division of Cancer Treatment Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, June 6–7, 1988, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 6 from 8:30 a.m. to approximately 6 p.m., and again on June 7 from 10 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 7 from 8 a.m. to approximately 10 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A52, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: May 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

FR Doc. 88–10567 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Board of Scientific Counselors, NEI; Meeting.

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 27–28, 1988, Building 31, NIE conference Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 27 from 8:30 a.m. until approximately 4 p.m. for general remarks by the Institute's Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 27 from approximately 4 p.m. until recess and on June 28 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Mechanisms of Ocular Diseases. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Acting Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: May 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

FR Doc. 88–10570 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, June 3, 1988, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. until approximately 11:30 a.m. on Friday, June 3. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 11:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

There will also be an open meeting of the Vision Research Program Planning Subcommittee on Thursday, June 2, from 3 p.m. until completion to discuss further the plans for *Vision Research: A National Plan 1989–90.* The meeting will be held at the National Eye Institute, Conference Room 31/6A35, National Institutes of Health, Bethesda, Maryland. Attendance by the public will be limited to space available.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health.)

Dated: May 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10571 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Vision Research Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, June 23–24, 1988, Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 23 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on June 23 until recess and on June 24 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A/51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5983, will provide summaries of the meeting, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health.)

Dated: April 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–10572 Filed 5–11–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Nongame Bird Strategies; Draft Availability

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of Draft Migratory Nongame Bird Strategies.

SUMMARY: This notice advises the public that a draft document, "Migratory Nongame Bird Strategies," outlining new and continuing Service activities related to migratory nongame birds, is available for public review and comment. This document was prepared in response to public concerns about the welfare of migratory nongame birds and to interest expressed in the strategies to be employed by the Service in managing this resource. This document will be amended periodically to reflect changes in Service efforts related to migratory nongame birds.

ADDRESSES: Copies of this document can be obtained by contacting the U.S. Fish and Wildlife Service, Office of Migratory Bird Management, Washington, DC 20240 (202–254–3207). Copies are available in Room 536, 1717 H Street, NW., Washington, DC. Comments should be addressed to: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The Federal Government has been assigned specific responsibility for the protection of migratory birds, including approximately 770 species that are not hunted. Legislation protecting these species includes the Fish and Wildlife Conservation Act of 1980, Migratory Bird Treaty Act of 1918, Migratory Bird Conservation Act, Migratory Bird Hunting and Conservation Stamp Act, Lea Act, and Federal Aid in Wildlife Restoration Act. International treaties, including the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and treaties with individual countries sharing migratory bird resources with the United States, also provide for international cooperation in the protection of migratory birds, including nongame species. The provisions of the laws and treaties related to migratory birds are carried out primarily by the Service.

Service actions related to migratory game birds have been published regularly in the Federal Register for public review and comment, as have Service actions related to endangered or threatened migratory nongame bird species. This is the first time a document describing Service actions to nongame migratory birds, that are not threatened or endangered species, has been available for public review and comment. This document is designed to focus new and continuing Service actions directed toward nongame migratory bird species and to respond to the evident public interest in these species. Public comments or suggestions may be submitted to the ADDRESS above.

Dated: April 26, 1988.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88–10585 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–964–4213–15]

Notice for Publication; Alaska Native Claims Selection; Doyon, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited. The lands involved are in the vicinity of Flat, Alaska.

Serial No.	Land description	Approximate acreage
AA–8103–14	T. 26 N., T. 46 W., Seward Meridian.	22,829
AA–8103–15	T. 26 N., T. 47 W., Seward Meridian.	21,440
AA–8103–16	T. 27 N., T. 46 W., Seward Meridian.	22,832
AA–8103–17	T. 27 N., T. 47 W., Seward Meridian.	18,233

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until June 13, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stanley H. Bronczyk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 88–10595 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–JA–M

[CO–050–4830–12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that the Canon City District Advisory Council (DAC) Meeting will be held Wednesday, June 15, 1988, 9:30 a.m. to 4:30 p.m. and Thursday, June 16, 1988, 8 a.m. to 4 p.m. at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. Orientation for New DAC Members;
2. Tour of Public recreation sites along the Arkansas River from Texas Creek to Parkdale;
3. Arkansas River Recreation Area Management Plan workshop;
4. Session on improving the Canon City DAC;
5. Quail Mountain update;
6. San Luis Valley Resource Management Plan update;
7. Reports from Area Managers on current programs;
8. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 2 p.m. on Thursday or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, Colorado 81212 by June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 275–0631.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office

approximately 30 days following the meeting.

Stuart L. Freer,

Associate District Manager

[FR Doc. 88-10653 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-020-08-4213-01]

Phoenix District Advisory Council; Open Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Phoenix District Advisory Council.

DATE: June 15, 1988.

ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets June 15 at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix at 9:00 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976 and the Public Rangelands Improvements Act of 1978.

The agenda for the meeting includes:

—Empire and Cienega Ranches
—Council Organization
—Superconducting Super Collider
—Goldwater Range
—Red Mountain Land Exchange
—BLM Management Updates
—Business from the Floor
—Public Comments and Statements
—Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters are welcome.

Dated: May 3, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88-10591 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-32-M

[NM-940-08-4111-13; NM NM 56263]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Sun Operating Limited Partnership petitioned for reinstatment of oil and gas lease NM NM 56263 covering the following described lands located in:

Lea County, New Mexico

T. 19 S., R. 34 E., NMPM,
Sec. 28: NE¼, N½S½.
Containing 320.00 acres, more or less.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, June 1, 1987.

Date: May 5, 1988.

Martha R. Rivera,

Acting Chief, Adjudication Section.

[FR Doc. 88-10654 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-020-08-4212-12]

Realty Actions; Sales, Leases, etc.; Arizona

Realty Action: Exchange of Public Lands.

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

Maricopa County

T. 5N., R. 3 E.,
Sec. 1.
T.5N., R. 4 E.,
Sec. 6.
T. 6 N., R. 3 E.,
Sec. 35.
T. 6 N., R. 4 E.,
Secs. 1, 11 and 12.
Containing 399.83 acres.

Pinal County

T. 4 S., R. 8 E.,
Sec. 13.
T. 4 S., R. 9 E.,
Secs. 11, 26 and 27.
T. 5 S., R. 8 E.,
Sec. 34.
T. 5 S., R. 9 E.,
Sec. 8.
T. 6 S., R. 8 E.,
Secs. 25, 26 and 36.
T. 7 S., R. 4 E.,
Secs. 10, 15 and 21.
T. 7 S., R. 10 E.,
Secs. 5-8, 14, 17 and 18.
T. 10 S., R. 7 E.,
Secs. 12, 13 and 24.
T. 10 S., R. 9 E.,
Secs. 17, 29, 30 and 31.
Containing 8946.60 acres.

Pima County

T. 12 S., R. 11 E.,
Secs. 28 and 33.
T. 13 S., R. 11 E.,
Secs. 5 and 29.
T. 13 S., R. 12 E.,
Secs. 9, 28, 33 and 34.
Containing 746.85 acres.

Copies of the complete legal descriptions may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: May 4, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88-10590 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-08-4212-13; CA-21600]

Realty Action; Exchange of Public and Private Lands; San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, CA-21600.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy

and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 11 S., R. 2 W.,
Sec. 23: NW¼SE¼;
Sec. 25: Lots 11, 12, 13, and 14;
Sec. 26: W½NE¼, E½NW¼.
Containing 217.64 acres, more or less.
San Diego County, California.

In exchange for these lands, the United States will acquire the following described lands in San Diego County from Mr. Roque de la Fuente II, 8398 Vickers Street, San Diego, California 92111:

San Bernardino Meridian, California

T. 18 S., R. 1 E.
Sec. 20: SW¼NW¼;
Sec. 21: N½NE¼;
Sec. 35: Lots 2, 3, and 4, SE¼NW¼.
Containing 236.90 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire non-federal lands abuting the Otay Mountain National Cooperative Land and Wildlife Management Area.

This Area is important as habitat for certain unique and sensitive flora and fauna and the acquired lands will be added to and included in this Area. The public interest will be well served by completing the exchange.

Publication of this Notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, including the mineral leasing laws. The segregative effect will end upon issuance of a patent or 2 years from the date of publication, whichever occurs first.

The values of the land to be exchanged are approximately equal. Full equalization of values will be achieved by acreage adjustments or by a payment to the United States by Mr. de la Fuente II of funds in an amount not to exceed 25% of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. Those rights for access road purposes across lots 13 and 14 in said section 25 granted to Sager Management Corporation, its successors or assigns, by right-of-way grant CA–8914, under the Act of October 21, 1976 (43 U.S.C. 1761).

2. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

3. A right-of-way for a water tank, helicopter pads, and all appurtenances thereto, constructed by the authority of the United States upon the SW¼NW¼ SE¼ of said sections 23, and the SW¼ SE¼NW¼ said section 26, under reservation R–490.

FOR FURTHER INFORMATION CONTACT: Mike Selman, Indio Resource Area, (619) 323–4421. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Date: May 6, 1988.

H.W. Riecken,

Acting District Manager.

[FR Doc. 88–10655 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–08–4212–24; N–48361]

Realty Action; Land Use Permit in Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: FLPMA, section 302 Land Use Permit.

SUMMARY: The Bureau of Land Management (BLM) is proposing to issue a land use permit under the authority of section 302 of the Federal Land Policy and Management Act of 1976. The permit would authorize an agricultural trespass pending a decision on the land's ultimate disposition. This may include sale, exchange, lease or termintion of the unauthorized use. The non-competitive land use permit would be issued for a 3–year period for the following public lands:

Mount Diablo Meridian, Nevada

T. 47 N., R. 65 E.,
Sec. 18, N½N½SW¼SE¼.
Aggregating 10 acres.

The land use permit would be offered to the Y–3–II Ranch at not less than the appraised fair market value as determined through a BLM appraisal. The permit may be renewed at the discretion of the Authorized Officer. The proposal is consistent with the Wells Resource Management Plan and does not conflict with any other Federal uses for the parcel.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89801. Any adverse comments will be reviewed by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of Interior.

Rodney Harris,

District Manager.

[FR Doc. 88–10658 Filed 5–11–88; 8:45 am]

BILLING CODE 4310–HC–M

[NDM63929; MT–030–06–4212–14]

Realty Action—Competitive sale; Morton County, ND

AGENCY: Bureau of land Management, Dickinson District, Interior.

ACTION: Notice of Realty Action NDM63929, competitive sale of public land in Morton County, North Dakota.

SUMMARY: The following described land is determined to be suitable for disposal under section 203 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1713 at no less than the appraised fair market value of $5,600.00.

Fifth Principal Meridian, North Dakota,

T. 135 N., R. 81 W.,
Sec. 6, Lot 6, NE1/4SW1/4.
Containing 74.84 acres.

The land will be offered for sale by sealed bid utilizing competitive bidding procedures. The sale will be held at 10:00 AM MDT on July 20, 1988 at the Dickinson District Office, 202 East Villard, Dickinson, North Dakota.

The subject land is located approximately 20 miles south of Mandan, North, Dakota. The tract has legal and physical access. The tract is isolated and generally unused by the public. It does not contain significant resource values that would justify retention. It is difficult and uneconomical to manage as part of the public land system and not suitable for management by another federal agency. Transfer of the land to private ownership will benefit public interest and provide for more efficient land management.

The proposed land sale is consistent with the North Dakota Resource Management Plan.

SUPPLEMENTARY INFORMATION: Publication of this Notice segregates

public land described above from settlement, exchange, location, and entry under public land laws, including mining laws, but not sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 for a period of two years from date of publication. The sale will be made subject to the following:.

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. Reservation to the United States of all minerals.

3. All valid existing rights (e.g., rights-of-way and leases of record).

Bidding Information

The land will be sold by sealed bids. Bids delivered or sent by mail will be considered only if received by the Bureau of Land Management, Dickinson District Office, 202 East Villard, Box 1229, Dickinson, ND 58602 prior to 10:00 AM MDT on July 20, 1988. Each sealed bid must be accompanied by a certified check, postal money order, draft, or cashier's check make payable to the Department of the Interior, Bureau of Land Management for not less than one-fifth of the amount of the sealed bid. The sealed envelope must be marked with the sale date and case number as follows:

Sealed Bid,
Public land sale NDM6329,
July 20, 1988.

Oral bidding will be used when two or more valid high sealed bids of equal amounts are received. Oral bidding will involve only those parties submitting the high bids.

The highest qualifying bid shall be publicly declared.

If the land is not sold at this sale, it will be offered over-the-counter until sold or until the sale is cancelled. Offers to purchase the land in an over-the-counter transaction, if one is necessary, shall be by sealed bid. The bids will be opened 10:00 AM MDT/MST the second Friday of each month. Bids must be received no later than 4:00 PM the day before the sale to be considered. Other bidding information given in this Notice applies.

Comment Period

For a period of 45 days from the date of this Notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comment will be evaluated by the Bureau of Land Management Montana Sate Director, who may sustain, vacate, or modify this realty action. In absence of any objection, this realty action will become the final determination of the Department of the Interior.

Further Information

Information related to the sale, including the environmental assessment and land report, is available for review at the Dickinson District Office, 202 East Villard, Box 1229. Dickinson, North Dakota 58602.

Bidder Information

The bidder must be a United States citizen, or in the case of a corporation, subject to the laws of any state or the United States. A state, state instrumentality, or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of North Dakota.

Bids must be submitted by the principal or his agent.

Final Details

Once the high bid is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days from the date of the sale. Failure to submit the required amount within the allotted time will result in cancellation of the sale, and the deposit will be forfeited.

The successful bidder, if other than the grazing lessees, shall allow 180 days from the time patent is issued for the grazing lessees to salvage materials used to construct authorized range imporovement projects and to perform reclamation measures. The owners of the imporvements are as follows: Anton Gangl—fence 1,320 feet long; Robert Gangl—fence 1,535 feet long; Regina Gangl—fence 1,320 feet long.

All bids will either be returned, accepted or rejected within 60 days of the sale date.

Dated: May 5, 1988.

William F. Krech,

District Manager.

[FR Doc. 88-10659 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-08-4220-11: GP-08-130; OR-2187, ORE-013982, ORE-015246-A, ORE-012702, OR-011648-A]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all of portions of 5 separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905).

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Rogue River National Forest

OR 2187, Public Land Order No. 4572 of January 16, 1969.

Imnaha and Lodgepole Administrative Sites, 155 acres.

Located in Jackson County, approx. 35 miles Northeast of Medford.

T. 33 S., R. 4 E., W.M., secs. 15 and 32.

2. ORE 015246-A, Public Land Order No. 3650 of April 15, 1965.

Mount Ashland Winter Sports Area, 390 acres.

Located in Jackson County, approx. 20 miles Southeast of Medford.

T. 40 S., R. 1 E., W.M., secs. 16 and 2

Malheur National Forest

3. ORE 013982, Public Land Order No. 3496 of December 2, 1964.

Magone Lake Forest Campground Site, 233.55 acres.

Located in Grant County, approx. 12 miles Northeast of John Day.

T. 12 S., R. 32 E., W.M., secs. 6 and 7.

4. ORE 012702, Public Land Order No. 2983 of March 18, 1963.

Blue Mountain Administrative Site, 20 acres.

Located in Grant County, 24 miles Northeast of John Day.

T. 11 S., R. 35 E., W.M., secs. 33 and 34.

Siskiyou National Forest

5. ORE 011648-A, Public Land Order No. 2775 of September 27, 1962.

Wildhorse, Huntley Springs, Butler Bar & Elko Springs Campgrounds, 310 acres.

Located in Curry County, Southeast of Port Orford.

T. 36 S., R. 12 W., W.M., sec. 18; T. 37 S., R. 12 W., W.M., sec. 20; T. 33 S., R. 13 W., W.M., sec. 17; and T. 37 S., R. 13 W., W.M, sec. 10

The withdrawals currently segregate the lands from operation of the mining

laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: May 4, 1988.

[FR Doc. 88-10656 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5372, Block 151, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on May 6, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 6, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10663 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil and Exploration and Production

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0593C, Block 198, portion, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 4, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 4, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-10592 Filed 5-11-88; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA; Pollution Control; Consent Judgements: USX Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on April 18, 1988, a proposed

consent decree in *United States* v. *USX Corporation*, Civil Action No. H 78–494 was lodged with the United States District Court for the Northern District of Indiana. The proposed consent decree resolves a judicial enforcement action brought by the United States against USX Corporation for the violation of a prior consent decree entered into on April 26, 1983 pursuant to the Clean Air Act.

The proposed consent decree requires the defendant to meet certain limitations on emissions from its No. 2 Q–BOP Shop, to engage in self-monitoring of air emissions, and to pay the sum of one hundred, fifty thousand dollars ($150,000.00) to the United States Government as a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corporation*, D.J. Ref. 90–5–2–3–892C.

The proposed consent decree may be examined at the office of the United States Attorney, 312 Federal Building 507 State Street, Hammond, Indiana 46320.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–10664 Filed 5–11–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to National Cooperative Research act Of 1984 Biotechnology Research and Development Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notification has been filed by Agricultural Research and Development Corporation ("ARDC") simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to Biotechnology Research and Development Corporation ("BRDC") and (2) the nature and objectives of BRDC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to BRDC and its general areas of planned activity are given below.

The parties to BRDC are ARDC, American Cyanamid Company, Amoco Technology Company, The Dow Chemical Company, Ecogen Inc., Hewlett-Packard Company and International Minerals & Chemical Corporation. The objective of BRDC is to undertake research and development in the biotechnology area, including research in the area of fermentation, in part through cooperative research and development agreements with Federal laboratories under the authority granted to those laboratories by the Federal Technology Transfer Act of 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–10593 Filed 5–11–88; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before June 13, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202–786 0233) and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision

Title: Instructions for Applicants with Projects Requiring the Use of Automation Technology.

Form Number: Not applicable.

Frequency of Collection: Annual.

Respondents: Humanities researchers and institutions applying for funding whose projects require the use of automation technology.

Use: To justify the use and cost of equipment and the methodology involving automation technology that will be employed on proposed projects so that competing applications for funding can be evaluated in the peer review process.

Estimated Number of Respondents: 445.

Estimated Hours for Respondents to Provide Information: 8 per respondent.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88–10666 Filed 5–11–88; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences Subcommittee on National Optical Astronomy Observatories; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences Subcommittee on National Optical Astronomy Observatories.

Date & Time: May 25, 26, and 27, 1988, 9:00 am—5:00 pm.

Place: National Science Foundation, Room 536.

Type of Meeting:

May 25, 1988, 9:00 am—5:00 pm Open.
May 26 and 27 1988, 9:00 am—5:00 pm Closed.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To review the plans of the National Optical Astronomy Observatories (NOAO) for restructuring their program and to advise NSF on their appropriateness.

Agenda:

Wednesday, May 25

9:00 am—5:00 pm, NOAO programs, options for the future.

Thursday and Friday, May 26 and 27

Closed. Discussion of project under review for funding.

Reason for Closing: The project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4), and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Decision to hold meeting was not made until today. Date of meeting was the first available date committee could meet.

M. Rebecca Winkler,

Committee Management Officer.

May 6, 1988.

[FR Doc. 88–10615 Filed 5–11–88; 8:45 am]

BILLING CODE 7555–01–M

Notice of Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Biological Facilities Center Progam.

Date and Time: Monday, June 6, 1988 from 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, Washington, DC Room 540, Telephone: 202–357–7652.

Type of Meeting: Closed.

Contact Person: Dr. Sonja Sperlich, Associate Program Director Biological Facilities Center, National Science Foundation, Room 325C, Washington, DC Telephone: 202–357–7652.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–10612 Filed 5–11–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Withdrawal of Portion of Application for Amendments to Facility Operating Licenses; Florida Power and Light Co.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company (the licensee) to withdraw a portion of their application dated February 19, 1988, as supplemented April 22, 1988, for the Turkey Point Plant Unit Nos. 3 and 4, located in Dade County, Florida.

The proposed amendments were to revise Section 6 (Administrative Controls) of the Turkey Point Technical Specifications. In particular, a portion of the proposed amendments requested deletion of the requirement for the Operations Superintendent to hold a current Senior Reactor Operator's (SRO) license at Turkey Point. The Commission issued a Notice of Consideration of Issuance of Amendments in the **Federal Register** on March 23, 1988 (53 FR 9504). By letter dated April 22, 1988, the licensee requested the NRC to defer action on that portion of their application related to deleting the SRO requirement for the Operations Superintendent. The basis for withdrawal of that portion of the application was to avoid delays in processing the rest of the amendment while the NRC staff further considered alternatives to the SRO requirement. The Commission has considered the licensee's April 22, 1988 request and has determined that permission to withdraw that portion of the February 19, 1988 application should be granted.

For further details with respect to this action, see (1) the application for amendment dated February 19, 1988, (2) the licensee's letter dated April 22, 1988, withdrawing the application for amendments, and (3) our letter dated May 5, 1988.

All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland, this 5th day of May, 1988.

For the Nuclear Regulatory Commission.

Gordon E. Edison, Sr.

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10609 Filed 5–11–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and the Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio.

The amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to Safety System Instrumentation.

The proposed amendment, specifically, would revise Table 3.3–11, TS 3.3.2.2, Steam and Feedwater Rupture Control System Instrumentation, to permit bypass of Functional Unit 1, Main Steam Pressure Low Instrument Channel, when steam pressure is below 700 psig vice 650 psig. The revision would also require automatic removal of the bypass when the steam pressure exceeds 750 psig vice 650 psig.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

By June 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(l)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 29, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 6th day of May, 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–10610 Filed 5–11–88; 8:45 am]

BILLING CODE 7590–01–M

Virginia Electric & Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to the Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units Nos. 1 & 2 (NA–1&2) located in Louisa County, Virginia

The amendments would revise the NA–1&2 Technical Specification (TS) containment air temperature upper limit from 105°F to 120°F. NA–1&2 currently operate within an allowable air temperature range of 86°F to 105°F. The upper temperature limit is approached during the summer months because of high ambient and service water temperatures. This has required implementation of specialized manpower-intensive procedures to prevent violation of the NA–1&2 TS limits. This condition exists because there is no practical way to reduce the temperature in a large, enclosed volume or a large body of water in short periods of time. The NA–1&2 TS action statements specified in Limiting Conditions For Operations (LCO) 6.15 (Primary Containment Average Air Temperature shall be maintained at equal to or less than 105°F) and LCO 7.5.1 (Service Water Reservoir and North Anna Reservoir shall be maintained equal to or less than 95°F) provide 8 or 6 hours, respectively, to restore the respective temperature to within its limit or be in at least Hot Standby in 6 hours and in Cold Shutdown within the following 30 hours. For these reasons, the licensee has submitted the proposed change with a Safety Evaluation (SE) to justify

increasing the upper containment temperature limit to a value of 120°F.

The containment temperature limit is determined by performing the necessary transient analyses to ensure that the containment design criteria are met following a design basis accident. Temperature is a significant intitial condition for these analyses. Another important analysis input is the volume of water from the Refueling Water Storage Tank (RWST) available for the quench spray system. This volume has been defined in such a way as to permit the minimum TS volume to be reduced. This approach was chosen to permit the use of wide range level instrumentation for TS surveillance.

The plant design basis was reviewed to determine which transients are impacted by the increased service water temperature and containment bulk temperature. The containment design is based on two Condition IV transients; the Loss of Coolant Accidtn (LOCA) and the Main Steam Line Break (MSLB). As a result of the worst LOCA or worst MSLB, containment integrity is assured if the following three conditions are satisfied: (1) The peak calculated containment pressure is less than the pounds per square inch guage (psig) design pressure of 45 psig, (2) the containment is depressurized to subatmospheric within 1 hour (3600 seconds) of the accident, and (3) once depressurized, the containment is maintained at a pressure less than atmospheric for the duration of the accident.

In support of the proposed change, the LOCA analysis considered a spectrum of break sizes and locations. Several different single-failure scenarios were also considered. The LOCA analysis actually consists of a peak pressure analysis, a depressurization and a third peak analysis as well as net positive suctionhead available (NPSHA) analyses for the recirculation spray pumps and the low head safety injection (LHSI) pumps. The intial conditions were determined for each of these analyses to provide the most conservative result. The peak containment pressure was found to be 44.1 psig. The length of time to subatmospheric conditions was found to be 3310 seconds.

The MSLB scenarios involved several combinations of break size, break type and power level. In all, 20 cases were run for the peak temperature cases and then repeated for the peak pressure cases. The peak pressure was found to be 44.9 psig.

The above results indicate that the containment design criteria are not violated at the initial conditions of 120°F containment temperature, 97°F service water temperature and the lower volume of RWST water.

In addition, operability of the electrical and mechanical equipment within the containment at temperatures up to 120°F has also been considered and found to be acceptable provided procedural changes are implemented. Therefore, the licensee proposes that the appropriate TS can be changed to permit the higher containment air temperature and the lower minimum RWST vlume. Finally, the maximum service water temperature, while analyzed at 97°F, would not be changed at this time, since the service water system modifications recently put into place at NA–1&2 can maintain the reservoir temperature below the currently allowable 95°F.

The proposed TS would increase the required containment test pressure for the integrated (Type A) and local (Types B and C) leak rate tests (NA–1&2 TS 3.6.1.2) from the current value of 40.6 psig to 44.1 psig. The licensee has reviewed the results of the most recent leak rate tests for NA–1&2 to determine if the tests were conducted at pressures equal to or in excess of that required by the proposed TS discussed above. An evaluation by the licensee has been performed to compare the measured leak rates from the most recent local and integrated leak rate tests with the projected leak rates had the tests been performed at the higher pressure required by the proposed TS. The licensee states that the leak rates which would have been observed had the tests been run at 44.1 psig would be well within the NA–1&2 TS limit for each type of test. Therefore, the licensee proposes that the intent of the proposed NA–1&2 TS for integrated and local leak rate testing have been satisfied by most recent tests. However, in order to comply with the proposed NA–1&2 TS, it will be necessary for the licensee to perform the subject containment leak rate tests prior to implementation of the proposed TS changes for revising the containment air temperature upper limit from 105°F to 120°F.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 13, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to

intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virignia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated March 2, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 4th day of May 1988.

For the Nuclear Regualtory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-10611 Filed 5-11-88; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Lag Service Reports.

(2) *Form(s) submitted:* AA-12, G-88a.

(3) *Type of Request:* Revision of a currently approved collection.

(4) *Frequency of use:* On occasion.

(5) *Respondents:* Businesses of other for-profit.

(6) *Annual responses:* 4,200.

(7) *Annual reporting hours:* 437.

(8) *Collection description:* The reports obtain the current service and compensation of an employee not yet reported to the Board. This lag information is used to determine eligibility for and amount of annuity applied for and to pay benefits due on a deceased employee's earnings records.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Allison Herron (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88-10584 Filed 5-11-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25670; File No. SR-DTC-88-3]

Self-Regulatory Organizations; Depository Trust Company; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 5, 1988, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The proposal regards the disposition of negotiable certificates of deposit which are issued by institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") and which are eligible for deposit at DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

The proposal authorizes DTC to assign to the FSLIC, on the closing of an FSLIC-insured institution, all of the rights, title and interest of DTC's nominee, Cede & Co., in negotiable certificates of deposit issued by the institution to the extent of insurance paid by the FSLIC. The proposal also clarifies that any claims by the FSLIC against DTC and participants for the recovery of insurance payments are subject to the indemnification provision contained in DTC Rule 2.

If the FSLIC closes an FSLIC-insured institution which has issued DTC-eligible certificates of deposit, DTC would be required under FSLIC procedures to assign all of the rights, title and interest of Cede & Co. in the certificates of deposit to the extent of insurance paid by the FSLIC. DTC will pass on to participants any insurance payments made by the FSLIC with respect to the certificates of deposit. Thereafter, DTC and participants may be required to repay to the FSLIC any insurance payments made in error or in excess of the statutory insurance limit.

DTC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will promote the immobilization of negotiable certificates of deposit. DTC states that the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change provides for negotiable certificates of deposit to be treated in a

manner similar to other types of DTC-eligible securities.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–DTC–88–3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR–DTC–88–3) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

May 6, 1988.

[FR Doc. 88–10650 Filed 5–11–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Capital Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3305)
American Government Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3306)
First Boston Strategic Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–3307)
Kemper High Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3308)
Bank of New England Corp.
Common Stock, $5.00 Par Value (File No. 7–3309)
Putnam Master Intermediate Income Trust
Shares of Beneficial Interest (File No. 7–3310)
Universal Medical Buildings, L.P.
Common Limited Partnership Units (File No. 7–3311)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 27, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10596 Filed 5–11–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

ACM Government Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–3312)
ACM Government Securities Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–3313)
Angell Real Estate Company
Common Stock, $0.01 Par Value (File No. 7–3314)
BancTexas Group, Inc.
Common Stock, $0.01 Par Value (File No. 7–3315)
Blue Chip Value Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–3316)
Cal Fed Income Partners L.P.
Depositary Units (File No. 7–3317)
Cameron Iron Works, Inc.
Common Stock, $0.2083 Par Value (File No. 7–3318)
CoastAmerica Corporation
Common Shares, $0.01 Par Value (File No. 7–3319)
Colonial Municipal Income Trust
Shares of Beneficial Interest (File No. 7–3320)
Countrywide Mortgage Investments, Inc.
Common Stock, $0.01 Par Value (File No. 7–3321)
Financial Corp. of Santa Barbara
Common Stock, $1.00 Par Value (File No. 7–3322)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 27, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10597 Filed 5–11–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

The Vendo Company
Common Stock, $1.25 Par Value (File No. 7-3302)
WPL Holdings, Inc.
Common Stock, $5.00 Par Value (File No. 7-3303)
Wisconsin Public Service Corporation
Common Stock, $4.00 Par Value (File No. 7-3304)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 27, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-10598 Filed 5-11-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16391; 812-6949]

International Cash Portfolios; Application

May 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: International Cash Portfolios (the "Applicant").

Relevant 1940 Act Sections: Order requested under section 11(a).

Summary of Application: Applicant seeks an Order approving certain exchange offers which may be made between separate existing portfolios of the Applicant, and which may be made between future portfolios of the Applicant or future investment companies (or portfolios thereof) for which Huntington Advisers or any affiliate thereof may serve as manager, investment adviser, distributor or principal underwriter, on a basis other than the relative net asset values of the shares to be exchanged.

Filing Date: The application was filed on December 30, 1987 and amended on April 20, and May 5, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 31, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 251 South Lake Avenue, Suite 600, Pasadena, California 91101.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is registered as an open-end, non-diversified management investment company under the 1940 Act. The Applicant is currently comprised of eight separate portfolios: The U.S. Cash Portfolio and seven international currency portfolios, the Australian Cash Portfolio, Canadian Cash Portfolio, D-Mark Cash Portfolio, Sterling Cash Portfolio, Swiss Franc Cash Portfolio, Yen Cash Portfolio, and the Global Cash Portfolio (the "International Currency Portfolios"). Each portfolio of the Applicant has its own investment objectives and policies.

2. Huntington Advisers is the manager, Bankers Trust Investment Management Limited is the investment adviser, and Huntington Investments, Inc., an affiliate of the manager ("Distributor"), is the distributor and principal underwriter.

3. The U.S. Cash Portfolio is currently offered at net asset value with no sales load. Shares of the seven other portfolios, the International Currency Portfolios, are offered at their net asset value plus a sales load of up to 1.25% of the offering price; this sales load is subject to reductions depending on the size of investment. There is no charge imposed on reinvestment of dividends and capital gains from shares of any portfolio of the Applicant.

4. Applicant proposes to make offers of exchange between the U.S. Cash Portfolio and the International Currency Portfolios at a price other than net asset value pursuant to the following exchange plan. Shares of the U.S. Cash Portfolio (which are offered to the public at their net asset value) may be exchanged for shares of any of the International Currency Portfolios (which are offered to the public at the varying sales load) based on relative net asset value plus the applicable sales load, calculated as if the amount of the exchange was a purchase of shares of one of the International Currency Portfolios, provided that such sales load will be charged only on the exchange of U.S. Cash Portfolio shares that were purchased with no sales load and that were not acquired by way of an exchange from one of the International Currency Portfolios. Exchange orders involving shares of the U.S. Cash Portfolio that were acquired by way of an exchange from one of the International Currency Portfolios will be based on relative net asset value with no additional sales load. Any exchange order must have a current value of at least $1,000.

5. Each of the foregoing transactions will not be subject to any other service charge or administrative handling fee in excess of $5.00 per exchange transaction.

6. Shareholders will be notified of the exchange privilege, including the possibility of a sales load being applicable, through the Applicant's prospectus and by means of other communications, including sales literature and other advertising.

Applicant's current prospectus states that Applicant reserves the right to modify or terminate the proposed exchange privilege. In addition, any sales literature or advertisements which promotes Applicant's proposed exchange privilege will disclose that Applicant has reserved the right to modify or terminate the exchange privilege. Because all portfolios of the Applicant are offered pursuant to a joint prospectus, the Applicant does not believe it is required to deliver to shareholders who execute exchanges, a new prospectus at the time an exchange offer is effected.

7. Currently, the Distributor does not receive a commission on exchange transactions which are limited to investors who have invested initially in the International Currency Portfolios. If the requested Order is entered, investors who have invested initially in the U.S. Cash Portfolio, which is sold at no load, will also be able to effect exchanges upon payments of the appropriate sales load differential. However, upon an initial exchange of shares of the U.S. Cash Portfolio for shares of an International Currency Portfolio, the Distributor will receive the same commission as it would for distributing shares of an International Currency Portfolio directly. Applicant does not believe that the payment of the sales commission to the Distributor in the exchange of shares of the U.S. Cash Portfolio for shares of an International Currency Portfolio will provide sufficient economic incentive for the Distributor to initiate such exchanges for its own benefit. In addition, while the Distributor will be notified of the exchange program, Applicant will not promote to the Distributor one portfolio over another and, in particular, the International Currency Portfolios over the U.S. Cash Portfolio. The Distributor will not receive advice from Applicant as to the suitability of an investment in the separate portfolios. Applicant will not solicit or promote exchange offers and will establish internal monitoring and review procedures to ensure that such exchanges are made at the request of the shareholder and not for the personal gain of the Distributor or any sales representative. Applicant further agrees to comply with all applicable federal and state laws and rules, as well as the rules and regulations of all agencies having jurisdiction.

8. Applicant is requesting that any Order issued by the Commission also extend to all open-end investment companies, or series of the Applicant, which may be organized in the future and which are managed, advised, or distributed by Huntington Advisers or an affiliate, provided that the shares of such investment companies are subject to exchange offers and have load characteristics as described herein.

9. Applicant submits that the proposed exchange plan is fair and equitable to shareholders of all of the portfolios of the Applicant while at the same time giving shareholders flexibility in their financial planning and is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant also submits that the proposed order is consistent with the provisions of Rule 11a–3 proposed by the Commission.

Applicant's Condition

If the requested order is granted, Applicant undertakes to:

1. Request an amendment to the Order permitting such exchange privilege if, subsequent to the issuance of the Order, Applicant seeks to modify the exchange privilege;

2. Provide sixty (60) days prior written notice to shareholders if the Applicant subsequently seeks to modify or terminate the exchange privilege; and

3. Comply with the provisions of proposed Rule 11a–3, as such Rule may be amended in the future, upon its adoption by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10648 Filed 5–11–88 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–6011]

Issuer Delisting; Application To Withdraw From Listing and Registration; (Leisure Technology, Inc., Common Stock, Par Value $.10; $2.25 Cumulative Convertible Exchangeable Preferred Stock, $.10 Par Value)

May 6, 1988.

Leisure Technology, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

In making the decision to withdraw the Common Stock and Preferred Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Common Stock and Preferred Stock on the New York Stock Exchange, Inc. ("NYSE") and the Amex. The Company does not see any particular advantage in the dual trading of the Common Stock and Preferred Stock and believes that dual listing would fragment the market for such securities.

Any interested person may, on or before May 31, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10649 Filed 5–11–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 88–5–19; Docket 41441]

Application of Denham Aircraft Services Corp. II; Redetermination of Fitness

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 88–5–19), Docket 41441.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Denham Aircraft Services Corp. II continues to be fit and reissuing it a section 401 certificate authorizing it to engage in the foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so not later than May 24, 1988.

ADDRESSES: Responses should be filed in Docket 41441 and addressed to the Documentary Services Division,

Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Air Carrier Fitness Division, P–56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2343.

Dated: May 6, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–10640 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 88–035]

Towing Safety Advisory Committee; Meeting of Subcommittee on Tug-Barge Construction, Certification and Operations

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC) Subcommittee on Tug-Barge Construction, Certification and Operations. The Subcommittee will study non-destructive testing of pressure vessel type cargo tanks on barges. The meeting is being held to discuss various non-destructive testing methods and their application to pressure vessel type cargo tanks. The purpose of the Subcommittee is to develop a recommendation for a non-destructive test plan to be used during periodic cargo tank inspections. The meeting will be held on Monday, June 6, 1988, in Room 435–437, Federal Office Building, 167 North Main Street, Memphis, TN. The meeting is scheduled to begin at 9:00 a.m.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Discussion and development of non-destructive testing requirements of pressure vessel type cargo tanks on barges.
4. Adjournment.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, Room 2420, 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–0391.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Stegbauer, Chairman, TSAC Subcommittee on Tug-Barge Construction, Certification and Operations, (901) 525–6517; Mr. Howard Hime, U.S. Coast Guard Headquarters (G–MTH–2), (202) 267–2206; or LCDR Geoffrey Powers, U.S. Coast Guard Headquarters (G–MVI–2), (202) 267–1181, 2100 Second Street SW., Washington, DC 20593–0001.

Dated: May 5, 1988.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–10624 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Town of Milford, Town of Amherst, Town of Hollis, Town of Merrimack, City of Nashua, NH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Towns of Milford, Amherst, Hollis and Merrimack, and the City of Nashua, Hillsborough County, New Hampshire.

FOR FURTHER INFORMATION CONTACT: William F. O'Donnell, Area Engineer, Federal Highway Administration, Federal Building, Concord NH 03301, Telephone: (603) 225–1608 or William R. Hauser, Supervisor, Environmental Services Section, New Hampshire Department of Transportation, J.O. Morton Building, Concord, NH 03301, Telephone (603) 271–3226.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the New Hampshire Department of Transportation (NHDOT) and the Nashua Regional Planning Commission (NRPC), will prepare an environmental impact statement (EIS) on a proposal to construct a bypass of a section of N.H. Route 101–A between N.H. Route 101 in Milford, NH and the F.E. Everett Turnpike in Nashua, NH. The proposed bypass would relieve traffic congestion on existing NH Route 101–A and provide an alternative route to accommodate project increases in traffic demand.

Alternatives under consideration include (1) taking no action; (2) upgrading existing N.H. Route 101–A; (3) using alternate travel modes (mass transit); (4) employing transportation system management (TSM's); and (5) constructing on new location. A new location route will be a limited (fully controlled) access facility about 6 miles in length. Various design variations of grade and alignment will be studied.

Letters describing the proposed action and soliciting comments/ input will be sent to appropriate federal, state and local agencies, and to private organizations and citizens. A series of public informational meetings will be held in the project area between April, 1988 and June, 1989. A Steering Committee has been established to review the corridor selection process and resolve issues. This committee includes representatives from FHWA, NHDOT, NRPC and the five communities. A public hearing will be held following distribution of the Draft Environmental Impact Statement (DEIS). Public notice will be given of the time and place of all meetings and the hearing. The DEIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time, but meetings will be held with various agencies believed to have an interest in the study area and the potential social, economic and environmental factors affected by the proposed action. Agencies to be invited to be cooperating agencies are the Environmental Protection Agency and the U.S. Army Corps of Engineers.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the NHDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 3, 1988.

Larry R. Dreihaup,

Assistant Division Administrator, Concord, New Hampshire.

[FR Doc. 88–10665 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petitions for Exemption or Waiver; Pend Oreille Valley Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that four railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

Pend Oreille Valley Railroad (POVA)

FRA Waiver Petition Docket No. HS–88–8

The POVA seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The POVA states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The POVA provides service on over 61 miles of track between Newport and Metaline Falls, Washington.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Pioneer Valley Railroad (PVRR)

FRA Waiver Petition Docket No. HS–88–9

The PVRR seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PVRR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the PVRR's operation if it encountered unusual operating conditions or circumstances. The PVRR provides freight service between Westfield and Holyoke, and between Westfield and Easthampton, all within the State of Massachusetts.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Fore River Railway (FRRY)

FRA Waiver Petition Docket No. HS–88–10

The FRRY seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The FRRY states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The FRRY provides service on over 2 miles of track between East Braintree, Massachusetts and Quincy Point, Massachusetts.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Eureka Southern Railroad Company Inc. (EUKA)

FRA Waiver Petition Docket No. HS–88–11

The EUKA seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The EUKA states that because of the unusual operating conditions under which it operates that an exemption from the 12-hour limitation is a necessity. The EUKA provides service between Willits and Eureka, California, a distance of 145 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–87–20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before June 28, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing data for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on May 6, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–10627 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–06–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 5, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

New Collection

1. Department of Veterans and Benefits
2. VA Matic Authorization
3. VA Forms 29–0532 & 29–0532–1
4. The form is used by an insured to authorize the VA to make deductions from the insured's bank account.
5. On occasion.
6. Individuals or households.
7. 32,000
8. 5,333
9. Not applicable

[FR Doc. 88–10573 Filed 5–11–88; 8:45 am]

BILLING CODE 8320–01–M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue NW., Washington, DC (202) 233–2282.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 5, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

Extension

1. Department of Medicine and Surgery
2. Application for Adaptive Equipment—Motor Vehicle
3. VA Form 10–1394
4. This form is used to collect information which is used by the Prosthetic Service of the Department of Medicine and Surgery and Fiscal Service of the Department Veterans Benefits, in determining eligibility/entitlement and reimbursement of individual claimants
5. Nonrecurring
6. Individuals or households
7. 10,844
8. 2,711
9. Not applicable

[FR Doc. 88–10574 Filed 5–11–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:40 a.m. on Monday, May 9, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible failure of certain insured banks; and (2) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director of C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: May 9, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-10748 Filed 5-10-88; 1:49 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

Nectarines Grown in the State of California; Amendments to the Size Requirements and Clarification of the Maturity Regulations for Nectarines

Correction

In proposed rule document 88-8431 beginning on page 12687 in the issue of Monday, April 18, 1988, make the following correction:

§ 916.356 [Corrected]

On page 12691, in the first column, in § 916.356(a)(6), the first line should read "(6) During January 1 through May 31, of".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Texaco Inc.

Correction

In notice document 88-9288 beginning on page 15106 in the issue of Wednesday, April 27, 1988, make the following corrections:

1. On page 15107, in the third column, in the first complete paragraph, in the fifth line, "shall" should read "should".

2. On page 15108, in the first column, in the first complete paragraph, in the fifth line, "No. R086-000" should read "No. R086-31-000".

3. On the same page, in the second column, in paragraph "a", in the 14th line, "of" should read "to"; in the 17th line, "KCS-0015" should read "KCX-0015".

4. On page 15110, in the third column, in the last paragraph, in the first line, after "data" insert "considered".

5. On page 15111, in the first column, in paragraph "202", in the ninth line, "EAR" should read "ERA".

6. On page 15114, in the third column, in paragraph "1002", in the 12th line, "notice" was misspelled.

7. On page 15115, in the first column, the paragraph in small type between paragraphs "1" and "2" should be removed and inserted on page 15114, in the third column, following the heading "Exhibit A".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0110]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cefmax

Correction

In notice document 88-8452 appearing on page 12823 in the issue of Tuesday, April 19, 1988, make the following correction:

In the first column, in the last paragraph, in the eighth line "being" should read "begins".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0093]

Armstrong Laboratories, Inc.; Premarket Approval of Armstrong Sterile Saline Solution

Correction

In notice document 88-8662 beginning on page 12993 in the issue of Wednesday, April 20, 1988, make the following correction:

On page 12994, in the first column, in the first complete paragraph, in the second line, "May 30, 1988" should read "May 20, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Demonstration Grants; Announcement of Fiscal Year (FY) 1988 Research Demonstration Program (RDP); Availability of Grant Funds and Request for Applications

Correction

In notice document 88-9924 beginning on page 16020 in the issue of Wednesday, May 4, 1988, make the following corrections:

1. On page 16020, in the second column, in the seventh line, "to the" should read "other".

2. On page 16021, in the first column, in the first line, "area" should read "areas".

3. On the same page, in the same column, in the second complete paragraph, in the 5th line, "12101" should read 12102"; in the 15th line, "benefits" should read "benefit".

4. On the same page, in the third column, in the third paragraph under "1. Definition of Disability", in the first line, "this" should read "his".

5. On page 16022, in the third column, in the 25th line from the bottom, after "cost of" insert "certain".

6. On page 16024, in the third column, in the last paragraph, in the fifth and sixth lines remove, "programs should target DI SSI beneficiaries and be".

7. On page 16025, in the first column, in the first complete paragraph, in the second line, "*Risl*" should read "*Risk*".

8. On the same page, in the second column, in the ninth line, "is" should read "if".

9. On page 16029, in the first column, in the second complete paragraph, in the second line and in the second column, in the second complete paragraph, in the fourth line, "SAA" should read "SSA".

10. On page 16031, in the first column, in the last paragraph, in the fourth line, "SSP" should read "SSA".

11. On the same page, in the second column, in the first paragraph, in the fifth line, "conforming" was misspelled.

12. On page 16033, in the second column, the first three lines of *Item 4a* should read "*Item 4a Thru 4h*. Legal name of applicant, name of primary organizational unit which".

13. On page 16034, in the second column, under "Part III", in the second

complete paragraph, in the last line, "allowance" should read "allowable".

14. On page 16035, in the first column, in the fourth complete paragraph, "Link 6k" should read "Line 6k".

15. On the same page, in the second column, under the fourth complete paragraph, the formula should read:

$$\text{Annual Salary (col. 1)} \times \frac{\text{No. of Months (col. 2)}}{12} \times \text{Percent of Effort (col. 3)} = \text{Total Amount Required (col. 4)}$$

16. On page 16036, in the second column, in the fifth complete paragraph, in the first line, "project(s)" should read "product(s)".

BILLING CODE 1505-01-D

Federal Register

Thursday
May 12, 1988

Part II

Farm Credit Administration

12 CFR Part 611 et al.
Farm Credit System; Proposed Rules

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Conservatorships and Receiverships

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Agricultural Credit Act of 1987 enacted on January 6, 1988, amended the provisions of the Farm Credit Act relating to conservatorships and receiverships. The Farm Credit Administration (FCA) Board proposes, for public comment, revisions to its regulations governing receiverships and conservatorships to conform the regulations to changes made by the 1987 Act, which require that the power specified therein be exercised by the FCA Board as opposed to the FCA or the Chairman, and to make other technical corrections.

DATE: Comments must be received by June 13, 1988.

ADDRESS: Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eldon Stoehr, Regional Director, Northeast Region, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4251, TDD (703) 883–4444,

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Sections 101, 110, 201, 306, 401, and 431 of the Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act) amended certain provisions of the Farm Credit Act of 1971 (Act) relating to the appointment and conduct of conservatorships and receiverships. The FCA proposes revisions to 12 CFR Part 611, Subparts K, L, M, and N to conform these regulations to the amended statutory requirements.

The FCA Board proposes to amend 12 CFR Part 611 Subparts K, L, M, and N to conform these regulations to changes made by the 1987 Act which require that the powers specified therein be exercised by the FCA Board, as opposed to FCA or the Chairman. These changes are incorporated in the Act as amendments to sections 1.3(b) and 4.12.

Section 201 of the 1987 Act amended the Act by adding a new Title VI which provides for the establishment of the Farm Credit System Assistance Board. New section 6.6 provides that if FCA determines a condition(s) set forth in section 4.12(b) of the Act is met, the Farm Credit System Assistance Board may direct FCA to appoint a conservator, or may request the FCA Board to initiate action to appoint a receiver. The FCA proposes revising § 611.1156(a) to reflect this authority.

The proposed regulations will amend the second sentence in §§ 611.1167(b), 611.1175(b), and 611.1182(b) to delete the provision under which the Farm Credit Administration, as opposed to a certified public accountant, would conduct an audit of an institution in receivership. Prior amendments to the Act have deleted the FCA's express authority to audit institutions.

Section 306 of the 1987 Act amends § 4.12(b) of the Act by adding a sixth ground for appointment of a conservator or receiver for a Farm Credit System (System) institution. Under this provision, a receiver or conservator can be appointed by the FCA if the institution defaults on the payment of principal or interest on an insured obligation as defined in § 5.51(3) of the Act. The proposed regulations will amend § 611.1156 by adding a new paragraph (b)(6) which sets forth this additional ground.

The 1987 Act repealed the provisions under which the Farm Credit System Capital Corporation was chartered and operated. Therefore; §§ 611.1165(a), 611.1170(h); and 611.1180(f) are amended by deleting reference to the Farm Credit System Capital Corporation.

The FCA Board proposes adding §§ 611.1162(c), 611.1167(d), 611.1172(c), and 611.1174(f) to address the retirement of "eligible borrower stock" in an institution in liquidation. The proposed amendments will implement the provisions of § 4.9A(c), as added by the 1987 Act, which provide for the protection of "eligible borrower stock" (as defined in section 4.9A(d)) at par value during a liquidation.

The FCA Board proposes an amendment to §§ 611.1162 and 611.1172 to implement the provisions of the 1987 Act which authorize System institutions to issue preferred stock to the Farm Credit System Financial Assistance Corporation. The proposed amendments will clarify that those authorities can be exercised notwithstanding the general prohibition against the issuance of stock by the System institution in receivership.

New section 4.37 of the 1971 Act contains requirements related to the disposition of certain borrower accounts in a System institution during the liquidation of an institution. Prior to enactment of section 4.37, the possibility existed that funds which a borrower had deposited with a Farm Credit System institution as a prepayment on a loan or otherwise, may not have been recoverable by the borrower if the System institution was placed in liquidation. Section 4.37 requires the funds deposited in uninsured voluntary or involuntary accounts to be applied as payment of or against the borrower's loan. The FCA Board proposes a new regulation § 611.1166 to implement this statutory requirement. The proposed regulation requires the receiver to apply funds that are held in an uninsured account against the indebtedness of the borrower, unless the borrower directs the receiver to otherwise apply such funds in the manner provided for in the existing loan documents. Conforming and renumbering changes are made to §§ 611.1166, 611.1167, 611.1168 and 611.1169.

The FCA Board is also proposing in a separate document published, elsewhere in this issue of the **Federal Register** amendments to the borrower rights regulations at 12 CFR 614.4513 which further explain the authority of institutions to have uninsured voluntary and involuntary accounts.

The FCA Board proposes the deletion of § 611.1174(c) which contains a procedure for the assignment of joint and several liability on bonds when a System bank is placed in receivership. The FCA Board determined that this process is adequately outlined in section 4.4 of the Act, and that this regulation should be deleted since it does not effectively implement the requirements of joint and several liability. In addition, the new provisions of Title V of the Act provide for the insurance of System obligations. Conforming and renumbering changes are also made to § 611.1174 (d), (e), and (f). The redesignated paragraph (d) is amended to incorporate this change by including a reference to section 4.4 of the Act.

The FCA Board proposes a technical amendment to eliminate reference to § 617.7090 which relates to the examination of institutions in liquidation. That section would be eliminated under proposed amendments to FCA examination regulations, to be published in the near future.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, Part 611 of Chapter VI, Title 12, of the Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority 12 U.S.C. 2031, 2091, 2182, 2183, 2243, 2244, 2250, 2252.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 [Amended]

2. Section 611.1155 is amended by adding the word "Board" after "Farm Credit Administration" in the first sentence.

3. Section 611.1156 is amended by revising paragraph (a) to read as follows:

§ 611.1156 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, at its discretion, appoint a conservator or receiver for such institution. Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, the Farm Credit System Assistance Board may direct the Farm Credit Administration Board to appoint a conservator and may request the Farm Credit Administration Board to appoint a receiver.

* * * * *

4. Section 611.1156 (b)(4) and (b)(5) are amended by adding the word "Board" after "Farm Credit Administration" each place it appears.

5. Section 611.1156 is amended by adding a new paragraph (b)(6) to read as follows:

(b) * * *

(6) The institution is unable to make a timely payment of principal or interest on any insured obligation (as defined in section 5.51(3) of the Act) issued by the institution individually, or on which it is primarily liable.

§ 611.1157 [Amended]

6. Section 611.1157(a) is amended by removing the words "Chairman of the" in the first sentence and adding the word "Board" after "Farm Credit Administration" the second, third, fourth, and fifth place it appears.

7. Section 611.1157(b) is amended by removing the words "Chairman of the" in the first sentence and adding the word "Board" after "Farm Credit Administration" the second place it appears.

§ 611.1158 [Amended]

8. Section 611.1158 is amended by adding the word "Board" after "Farm Credit Administration" each place it appears.

Subpart L—Liquidation of Associations

§ 611.1160 [Amended]

9. Section 611.1160(a) is amended by adding the word "Board" after "Farm Credit Administration" and removing the word "Chairman" and adding in its place the word "Board".

10. Section 611.1160(b) is amended by adding the word "Board" after "Farm Credit Administration".

11. Section 611.1160(e) is amended by adding the word "Board" after "Farm Credit Administration" the second place it appears and by removing the word "Chairman" and adding in its place the word "Board".

12. Section 611.1160 (f) and (g) is amended by removing the word "Chairman" and adding in its place the word "Board" each place it appears.

§ 611.1161 [Amended]

13. Section 611.1161 is amended by adding the word "Board" after "Farm Credit Administration" the first place it appears in the introductory paragraph.

14. Section 611.1161(s) is amended by adding the word "Board" after "Farm Credit Administration".

15. Section 611.1162(b) is amended by adding the word "Board" after "Farm Credit Administration"; and by adding new paragraphs (c) and (d) to read as follows:

§ 611.1162 Preservation of equity.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing above shall affect the authority of an association in receivership to issue preferred stock in accordance with Title VI of the Act.

16. Section 611.1165(a) is revised to read as follows:

§ 611.1165 Sale and transfer of loans.

(a) The receiver is authorized to sell loans, including any amount outstanding that was used to purchase stock or participation certificates of the association, to any commercial lending institution at fair market value (including any amount borrowed to purchase stock in the association).

* * * * *

§§ 611.1166, 611,1167 and 611.1168 [Redesignated as §§ 611.1167, 611.1168 and 611.1169]

17. Sections 611.1166, 611.1167 and 611.1168 are redesignated as §§ 611.1167, 611.1168, and 611.1169, and a new § 611.1166 is added to read as follows:

§ 611.1166 Uninsured accounts

Upon placing an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) that the funds will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

18. Newly redesignated § 611.1167(a)(4) is amended by adding the word "Board" after "Farm Credit Administration" and by adding a new paragraph (d) to read as follows:

§ 611.1167 Priority of claims.

* * * * *

(d) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

19. Newly redesignated § 611.1168(a) is amended by adding the word "Board" after "Farm Credit Administration"; and by revising paragraph (b) to read as follows:

§ 611.1168 Inventory, examination, audit and reports to stockholders.

* * * * *

(b) The association in receivership shall be examined on an annual basis by the Farm Credit Administration. The association shall be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the association in receivership.

* * * * *

§ 611.1169 [Amended]

20. Newly redesignated § 611.1169 is amended by removing the words "Chairman of the" in the first sentence; by adding the word "Board" after "Farm Credit Administration" the first and second place it appears; and by removing the words "pursuant to § 617.7090 of this chapter" in the third sentence.

Subpart M—Liquidation of Banks

21. Section 611.1170 is amended in paragraphs (a) and (b) by adding the word "Board" after "Farm Credit Administration" and in paragraphs (a), (e), (f), and (g) by removing the word "Chairman" and adding in its place the word "Board" each place it appears.

22. Section 611.1170 is amended by revising paragraph (h) to read as follows:

§ 611.1170 Appointment of receiver.

* * * * *

(h) For purposes of this subpart the term "bank" will include all banks, service corporations chartered under Title IV of the Act, the Federal Agricultural Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

23. Section 611.1172 is amended by adding "Board" after "Farm Credit Administration" in paragraph (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 611.1172 Preservation of equity.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing in this section shall affect the authority of a bank in receivership to issue preferred stock in accordance with Title VI of the Act.

24. Section 611.1174 is amended by removing paragraph (c); by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively; newly redesignated paragraph (d) is amended by removing the references to "(d)" and adding in their place, "(c)"; by revising newly redesignated paragraph (c)(5); and by adding new paragraph (f) to read as follows:

§ 611.1174 Creditors' claims and priority of claims.

* * * * *

(c) * * *

(5) All claims of holders of consolidated and Systemwide bonds and claims of the other System banks arising from their payments pursuant to section 4.4 of the Act.

* * * * *

(f) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of that Act.

25. Section 611.1175 is amended by revising paragraph (b) to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

* * * * *

(b) The bank in receivership shall be examined on an annual basis by the Farm Credit Administration. The bank shall be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the bank in receivership.

* * * * *

§ 611.1176 [Amended]

26. Section 611.1176 is amended by removing the word "Chairman" and adding in its place, the word "Board" in the first sentence; by adding the word "Board" after "Farm Credit Administration" the second place it appears; and by removing the words "pursuant to § 617.7090 of this chapter" in the third sentence.

Subpart N—Conservators and Conservatorships of Banks and Associations

27. Section 611.1180 is amended in paragraph (a) by adding the word "Board" after "Farm Credit Administration"; and in paragraphs (d) and (e) by removing the word "Chairman" and adding in its place the word "Board"; and paragraph (f) is revised to read as follows:

§ 611.1180 Appointment of a conservator.

* * * * *

(f) For purposes of this subpart "System institution" will mean all banks, associations, service corporations chartered under Title IV of the Act, the Federal Agricultural Mortgage Corporation, the Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

§ 611.1181 [Amended]

28. Section 611.1181 is amended in paragraphs (b) and (c)(1) by adding the word "Board" after "Farm Credit Administration".

29. Section 611.1182 is amended in paragraph (a) by adding the word "Board" after "Farm Credit Administration" the first place it occurs and by revising paragraph (b) to read as follows:

§ 611.1182 Inventory, examination, audit, and reports to stockholders.

* * * * *

(b) The institution in conservatorship shall be examined by the Farm Credit Administration on an annual basis. The institution shall also be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration may determine. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the institution in conservatorship unless otherwise ordered by the Farm Credit Administration.

* * * * *

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10190 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Parts 611 and 617

Organization; Examinations and Investigations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration Board (Board) proposes amendments deleting 12 CFR Part 617, Subpart A, which governs Farm Credit Administration (FCA) examinations and investigations. The FCA also proposes certain related amendments to 12 CFR Part 611 as a result of the deletion. It is proposed that this Subpart of the regulations be deleted to eliminate duplicative or unnecessary regulations. The Board determined that this amendment to the regulations should be proposed for public comment.

DATE: Written comments are due on or before June 13, 1988.

ADDRESS: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Stephen Smith, Credit Examiner, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4160,

or

James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: 12 CFR Part 617, Subpart A, contains regulations governing examinations and

investigations conducted by Farm Credit Administration examiners. The Farm Credit Administration proposes to delete those provisions of Part 617, Subpart A, which are merely duplicative of provisions contained in the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 et seq., or which are more appropriately addressed in internal agency procedures, as described.

The provisions of § 617.7000 repeat section 5.19 of the Act, relating to the examination of Farm Credit System institutions, except insofar as the definition of "System institution" in § 617.7000 includes incorporated or unincorporated service organizations. In order to clarify that service organizations are subject to FCA examination, it is proposed to amend § 611.1136. It is then proposed to delete § 617.7000 in its entirety.

Section 617.7010 establishes procedures for the investigation of criminal violations. The Board proposes elimination of § 617.7010, in its entirety, because the instructions contained therein are outdated. Since June 1986, System institutions have reported possible criminal violations directly to the cognizant U.S. Attorney without involvement of the Farm Credit Administration. The proposed amendments would also delete § 617.7020, which merely repeats requirements contained in section 5.21 of the Act, relating to examination of other financing institutions. Section 617.7030 relates to the responsibilities of Farm Credit Administration examiners. Section 5.19(a) of the Act provides that examiners will have the same powers and privileges, and be subject to the same requirements, responsibilities and penalties as apply to examiners under the National Bank Act, the Federal Reserve Act, and the Federal Deposit Insurance Act. The proposed amendments eliminate § 617.7030 as duplicative of statutory requirements.

Section 617.7070 provides a non-exclusive listing of some of the elements of an examination. The scope of a particular examination is a matter of discretion with the Farm Credit Administration. However, the general scope of examinations is specified in the FCA Examination Manual and Examination Bulletins, which are publicly available. The proposed amendments therefore delete § 617.7070.

Sections 602.205 and 602.289 contain the requirements concerning disclosure which are currently contained in § 617.7080. The requirements of § 617.7080 concerning reporting to the banks are operational in nature and are covered by the Examination Manual and Examination Bulletins. Therefore, the FCA proposes to delete § 617.7080 in its entirety.

Section 617.7090 repeats §§ 611.1168 and 611.1176 concerning examination of institutions in receivership or liquidation and is accordingly deleted by the proposed amendments. Amendments to §§ 611.1168 and 611.1176 proposed in a separate document, published elsewhere in this issue of the **Federal Register**, delete the cross-references to § 617.7090 contained in those sections.

List of Subjects in 12 CFR Parts 611 and 617

Agriculture, Banks, Banking, Investigations, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Chapter VI, Title 12, Code of Federal Regulations is proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: 12 U.S.C. 2031, 2091, 2182, 2183, 2243, 2244, 2250, 2252.

2. Section 611.1136 is revised to read:

§ 611.1136 Incorporated and unincorporated service organizations—regulation and examination.

Incorporated and unincorporated service organizations shall be subject to regulations for the banks and associations of the Farm Credit System, and shall be subject to examination by the Farm Credit Administration.

PART 617—[AMENDED]

3. The authority citation for Part 617 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252(a)(10).

4. The heading for Part 617 is revised to read as follows:

PART 617—INVESTIGATIONS

Subpart A—[Removed and Reserved]

5. Subpart A consisting of §§ 617.7000, 617.7010, 617.7020, 617.7030, 617.7070, 617.7080, and 617.7090 is removed and reserved.

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10186 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Parts 614, 615, and 613

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) enacted on January 6, 1988, amended provisions of the Farm Credit Act of 1971 (Act) by establishing new borrower rights. These include, among other things, procedures for the restructuring of loans from certain Farm Credit System (System) institutions which have become "distressed loans" as defined in the Act, protection for certain borrower stock, certain protections for borrowers who have met all loan obligations, cooperation by System institutions with certified State agricultural loan mediation programs, and a right of first refusal with respect to the sale or lease of certain acquired property of the institutions. On February 16, 1988, the Farm Credit Administration (FCA) published an Advance Notice of Proposed Rulemaking (53 FR 4417) requesting comments on the manner and process for implementing the new requirements of the Act. The FCA publishes proposed rules on these and related topics.

DATES: Comments must be received on or before June 13, 1988. A public hearing will be held on June 8, 1988. For information on the hearing, see the "Final Notice of Hearing" published elsewhere in today's **Federal Register.**

ADDRESS: Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Nancy E. Lynch, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Title I of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding several new sections to Title IV of the Act relating to the rights of those borrowing from System institutions. In particular, System institutions which are qualified lenders are directed to develop policies governing the restructuring of distressed loans, as those terms are

defined in the Act, and to submit such policies to FCA. Other revised provisions specify the review available to applicants and/or borrowers who are denied credit or restructuring of their loans, provide protection for borrower stock and voluntary or involuntary advance payment accounts, clarify procedures to be used in informing borrowers about qualifying for differential interest rate programs, establish certain protections for borrowers who have met all loan obligations, and provide a right of first refusal to certain borrowers to repurchase or lease certain property acquired by System institutions through foreclosure or voluntary conveyance. In addition, section 503(b) of the 1987 Act requires the FCA to prescribe rules requiring System institutions to cooperate in good faith with requests for and analysis of information made in the course of mediation under any State agricultural loan mediation program certified by the Secretary of Agriculture in accordance with section 501 of the 1987 Act.

On February 16, 1988, the FCA published an Advance Notice of Proposed Rulemaking (53 FR 4417) inviting public comment on how to revise FCA's current regulations to address the new provisions of the Act. In response to the notice, comments were received from the Farm Credit Corporation of America on behalf of its 37 member banks. Supplemental comments were received from four individual districts. Five System associations, one State Attorney General, two groups representing family farmers, and three individuals also submitted comments. All comments received have been considered in drafting the proposed regulations which are published today. However, comments on sections of the Act concerning areas other than borrower rights, and opinions concerning enforcement of any adopted regulations have not been individually addressed in this proposal. The proposed amendments to the regulations are explained below by section within the affected part of title 12, including any comments received on the subject matter contained in that section. Comments which merely addressed the need to delete sections of the existing regulations have not been referenced.

Part 614—Loan Policies and Operations

Subpart K—Disclosure of Loan Information

A technical amendment is proposed to be made to § 614.4365 to refer to "qualified lender" rather than System institution and to add a citation for the Truth in Lending Act.

The existing definitions in § 614.4366 are proposed to be amended to incorporate statutory language. Definitions of "loan," "loan origination charges," and "qualified lender" are proposed to be added. The definitions of loan and qualified lender are provided by the Act. Comments received indicated a need for clarification of the term "loan origination charges" since that term is used, but not defined in the Act. The definition proposed in the regulation is based on similar terms used in the implementing regulations and the commentary for the Truth in Lending Act. *See* 12 CFR Part 226.

Section 614.4367 is proposed to be revised to reflect the new language in section 4.13 of the Act, including references to the qualified lender, the effect of loan origination charges on the effective interest rate, disclosure of the at-risk nature of borrower stock (except stock guaranteed under section 4.9A of the Act), as well as the new disclosures required for loans that will or may be pooled pursuant to section 8.9 of the Act. A minor change to Model Form 1 is proposed to reflect the new disclosure requirements. One commenter questioned the usefulness of representative examples and sought borrower-specific loan disclosures. Given the clear statutory language in this area, FCA does not believe it would be appropriate to require such disclosures. This commenter also requested that FCA develop model disclosure forms for all the loan options available to borrowers, as well as for waiver of rights for loans sold in the secondary market. Considering the wide range of options which could be made available, FCA believes a model form in this area would be of little value. Another commenter requested clarification of what "loan options" meant, indicating an assumption that such options mean the various interest rate programs available to borrowers. While FCA believes interest rate programs would be considered loan options, individual lenders may have other types of programs which should also be disclosed. Therefore, FCA has not proposed a definition of that term. With respect to loans sold in the secondary market, the disclosures required by the statute and the regulations are explicit, obviating the need for the requested model form. FCA has adopted a suggestion from this commenter and has included a requirement in § 614.4367(b)(2) that qualified lenders inform borrowers that rights, if any, under applicable State laws are not waived. A comment was received from one System institution on the difficulty of timely compliance with the provisions of existing § 614.4367(c), especially where rate changes were tied to another institution's rate changes or some other readily identifiable index. This commenter recommended eliminating the requirement for advance notice of a rate change in these cases. Although the time limit has not been changed in the proposed regulation, FCA requests comment on the extent of such compliance difficulties and suggestions for a revised timeframe if appropriate. Depending on the comments received, FCA will consider revising the timeframe in the final regulation. The FCA disagrees with the commenter's assertion that advance notice of rate changes is of little value to a borrower whose only option may be to refinance the obligation. In fact, the advance notice is particularly relevant for such borrowers. It is also proposed to delete existing § 614.4367(b) as the required disclosure has already been made. It is proposed to delete § 614.4367 (e) and (f) and Model Forms 3 and 4 in their entirety as Banks for Cooperatives are no longer subject to the requirements. Deletion of § 614.4367(g) is proposed as the Farm Credit System Capital Corporation was dissolved on January 21, 1988 (53 FR 4072, February 11, 1988) pursuant to the 1987 Act.

A new § 614.4368 is proposed to address the disclosure of differential interest rates required by new section 4.13(b) of the Act. The language of the proposed regulation tracks the statutory language.

Subpart L—Notice of Action and Review

In order to more accurately reflect the topics covered, it is proposed to amend the heading of Subpart L to read as follows: *"Subpart L—Actions on Applications; Review of Credit Decisions".*

In § 614.4440, the definitions of "adverse credit decision" and "applicant" are proposed to be revised. One commenter requested that FCA consider a denial of a formal application for a lower interest rate to be an adverse credit decision subject to credit review committe action. FCA believes the responsibilities of the credit review committee are clearly established in the Act and therefore, has not adopted this suggestion. Definitions of "application for restructuring," "loan," "qualified lender," and "restructure" or "restructuring" are proposed to be added to this section based on the definitions of those terms in the Act.

Section 614.4441 is proposed to be changed to delete references to "System institutions" and to substitute "qualified lender" as provided by the Act.

Section 614.4442 is proposed to be changed to refer to qualified lenders and to provide that a loan officer who was involved in the adverse credit decision on a loan may not participate in the credit review committee consideration of that loan, as provided by new section 4.14(a)(2) of the Act. One commenter indicated that, with the advent of the Farm Credit Banks as of July 5, 1988, if a Federal Land Bank Association (FLBA) did not merge with a Production Credit Association (PCA), the Farm Credit Bank might be required to perform all credit reviews at the bank level. The commenter suggested that Congress had not intended this result. The FCA believes the definition of qualified lender in the statute is clear in that only direct lenders are affected. Therefore, FCA must assume that the result was intended. The make-up of the Farm Credit Bank's credit review committee is a matter for its discretion, provided, however, that a District board member serves on the committee. Other comments received on this section concerned providing for election of the "farmer" on the board and the delegation of the duties of board members on these credit review committees. The FCA thoroughly addressed similar concerns in adopting the existing regulations. The FCA finds nothing in the 1987 Act or its legislative history to support adopting a different approach at this time.

Section 614.4443 is proposed to be revised to provide for the personal appearance of the borrower, accompanied by counsel and/or another representative of choice, submission of documentation to the credit review committee, and the request for independent appraisals as provided in new section 4.14 of the Act.

Section 614.4444 is proposed to be revised to refer to qualified lenders and the maintenance of credit review committee records, and records, if appropriate, on restructuring and participation in state mediation programs. One commenter suggested that FCA should clarify the purpose of such records and identify the class of persons intended to have access to such records. FCA establishes recordkeeping requirements such as these for System institutions as part of its regulatory and examination responsibilities, in order to enable FCA to perform its examination functions properly. The circumstances under which other persons might obtain access to institution records are varied and FCA believes it is inappropriate to specify them in this regulation.

Subpart N—Loan Servicing Requirements

In order to more accurately reflect the topics covered, it is proposed to amend the heading of Subpart N to read as follows: *"Subpart N—Loan Servicing Requirements; Restructuring; State Agricultural Loan Mediation Programs; Right of First Refusal".*

One commenter requested that FCA continue the requirement in § 614.4510 that originating lenders "*shall* be responsible for servicing the loans which they make," in light of the provision in new section 8.9(d)(3) of the Act which provides that originating lenders *may* retain servicing on loans which are pooled for sale in the secondary market. (Emphasis added.) FCA believes the intent of the new provision of the Act was to provide flexibility in this area to the lenders. However, no changes are proposed to the regulation at this time. Revisions to the language of § 614.4510 will be proposed in a separate **Federal Register** document. This commenter also requested FCA to clarify the language of § 614.4510(d) to provide that loan servicing policies must be approved by FCA rather than "furnished" to FCA. The title "Approved policies" refers to those policies approved by the bank not by FCA. The policies are, of course, subject to review for compliance with the regulatory requirements and adequacy of direction to management. However, no specific FCA approval is required prior to implementation. As indicated above, FCA will propose amendments to § 614.4510 in a separate **Federal Register** document.

A new § 614.4512 is proposed to provide definitions, for use in the subpart, of "Application for restructuring," "Cost of foreclosure," "distressed loan," "foreclosure proceeding," "loan," "qualified lender," and "restructure" or "restructuring." The definitions track the statutory language concerning these terms. Several commenters expressed concern that the elements of the cost of foreclosure be clearly defined. While FCA appreciates the need to have all costs considered, it believes a regulation cannot exhaustively list what all such costs are, as they may vary from State to State and possibly even loan to loan. Therefore, the definition includes item (5) which is intended to address any cost not specified but which nonetheless must be considered. One commenter was concerned that the definition of restructuring in section 4.14A(a)(7) of the Act be clarified so as not to apply in situations where routine extensions and other changes in loan contracts were made, as a result of product marketing plans or other changes in operational plans where distress is not involved. FCA believes this commenter may have misinterpreted the scope of section 4.14A of the Act as the definition of restructuring only applies to loans which are distressed. Furthermore, institutions may consider restructuring on loans at any time if it is determined to be in the best interest of the lender.

It is proposed to delete existing § 614.4513 "Forbearance," in its entirety as the Act's provisions concerning restructuring are now applicable. To implement the provisions of new section 4.37 of the Act, "Application of Uninsured Accounts," a new § 614.4513 is proposed to be added providing for the establishment of advance payment accounts by all qualified lenders. Necessary revisions to the regulations in 12 CFR Part 611 concerning the disposition of these accounts by receivers, and revisions to § 614.4090 concerning Federal land bank lending authorities, will be proposed in separate **Federal Register** documents.

A new § 614.4514, "Protection of Borrowers Who Meet All Loan Obligations," is proposed to address the prohibitions contained in new section 4.14D of the Act. The language of this section tracks the statutory language. One commenter requested clarification that advanced taxes, insurance premiums, attorneys' fees, and advertising costs must be collected before a loan is considered current. FCA believes that the loan documents specifically identify that money must be collected before a loan is considered current and that to specify a list in the regulation would be inappropriate. Another commenter stated that FCA should require that an agreement to alter the prohibition against required principal reduction in section 4.14D(b)(2) of the Act be a separately negotiated document from the original loan contract. The FCA has not adopted this suggestion as it believes the form of the agreement is a matter to be decided by the parties.

The proposed new §§ 614.4515 through 614.4520 address the qualified lenders' obligations under the restructuring provisions of the Act, including the procedures to be followed in determining when to restructure, the borrower's right to a review of a denial of restructuring by the credit review committee of the lender, the notice required before foreclosure, and when foreclosure proceedings must be terminated. Although FCA is proposing

regulations addressing these areas, the requirements were applicable to all distressed loans of qualified lenders, as those terms are defined in the Act, on the date of enactment of the 1987 Act. A commenter expressed concern that the qualified lender's policies concerning restructuring issued pursuant to section 4.14A(g) of the Act were not informative enough as they merely echoed the statutory provisions. This commenter requested FCA to specify the contents of the policies. FCA will review the policies submitted pursuant to section 4.14A(g)(3) of the Act to determine compliance with the statutory provisions but has not included specific requirements for such policies as they were required to be adopted prior to the promulgation of these regulations. FCA anticipates that lenders will update their policies as they gain experience in implementing the provisions of the Act. While the language of these sections generally tracks the statutory provisions, new § 614.4514(d) includes an example of an adverse action in connection with placing a loan in nonaccrual status. FCA invites comments on whether further examples, or a definition of "adverse action," should be included in the subsection.

One commenter requested that the notice of denial of restructuring, required by § 615.4518, include the calculations used by the lender to determine the cost of restructuring and foreclosure, and any other evidence used by the institution in considering the application. While FCA does not agree that this information should be required as part of the notice, it acknowledges that access to some of the critical assumptions and calculations used by the lender in reaching its determinations could be helpful to the borrower in deciding whether to appeal. Therefore, in § 615.4518(d), the FCA has included a requirement for notice of whom to contact at the lender to obtain access to this information. FCA has not specified what information the lender must make available but invites comment on whether such a listing is required, and if so, the type of information that should be included.

One commenter indicated that FCA's authority to issue a directive requiring compliance with the restructuring provisions in new section 4.14A of the Act requires additional regulations. FCA has not proposed any new regulations specifically concerning its enforcement authority in this area as it believes regulations are not warranted given the clear statutory language. This commenter also requested that FCA monitor credit review committee activity in districts where no Special Asset group existed and othewise ensure that institutions were complying with the applicable provisions of these sections. FCA is, of course, required to do so by statute and is committed to doing so. Another commenter requested that § 614.4519 provide that the required 45-day notice period runs prior to the time the lender issues a summons and complaint in a foreclosure proceeding, as that term is defined in section 4.14A(a)(4) of the Act and proposed § 614.4512(e) of the regulations. This would allow the notice of intent to foreclose period to run concurrently with the 45-day distressed loan restructure period. FCA has not adopted this suggestion but invites comment on whether the regulation should specify when a foreclosure proceeding begins, e.g., when a loan is accelerated, issuance of a summons and complaint, etc. This commenter also requested that FCA specify that debtors' rights under bankruptcy laws substitute for the rights provided under the Act when a borrower files bankruptcy. FCA believes this is a determination for the Courts to make and has not included such a provision in the proposed regulations. Section 614.4519(c) provides that a certified lender may commence foreclosure proceedings after any applicable credit review committee consideration has been completed. However, since the restructuring decisions of certified lenders are subject to review by the District Special Asset Group, foreclosure proceedings would have to be terminated if that group prescribed a restructuring plan acceptable to the borrower. FCA believes this balances the borrower's right to review of the denial of restructuring against the certified lender's right to timely foreclosure action where it is warranted.

A new § 614.4520 is proposed to address the review of restructuring decisions required for institutions which are certified eligible to receive assistance under new section 6.4 of the Act.

A new § 614.4521 is proposed to address the requirement for coopération with certified State agricultural loan mediation programs and provides that such participation may occur concurrently with the required restructuring under new section 4.14A of the Act. Comments received supported the provision that the processes could occur simultaneously. Given the requirement for certification by the Secretary of Agriculture and the possibility of wide variations in State programs, the FCA does not currently anticipate a need to specify more detailed processes for cooperation. However, FCA will consider doing so if experience with the programs demonstrates it is necessary. One commenter sought to have FCA mandate participation in mediation programs even if the mediation is initiated by another creditor of the borrower. FCA believes that participation in State mediation programs, other than those specified in section 503(b) of the 1987 Act, is governed by the applicable State law and has not adopted this suggestion. Section 614.4521 would also implement the provisions of new section 4.14E of the Act by prohibiting conditioning of a loan from a System institution on the waiver of rights under a State mediation program. One commenter expressed concern that such a general prohibition be included in the regulations. One non-System commenter expressed support for the mediation process in general, based on experience in that commenter's State, and commended the process for use by System institutions. This commenter also supported disclosure of lender information to the borrower in the process of the mediation to ensure meaningful negotiations. This issue was addressed more fully above in connection with proposed § 614.4518.

A new § 614.4522 is proposed to address the right of first refusal provided in new section 4.36 of the Act. One commenter requested that FCA specify that all acquired property be sold through public auction as it was asserted that this process would assure the highest price for the property. This commenter also wanted to assure competition between auctioneers for the right to sell the property. FCA believes the decision concerning the manner of disposing of acquired property, if consistent with sound business practices, is a matter of discretion for the lender and, therefore, has not adopted this commenter's suggestions. Another commenter indicated that sale by public auction has become more commonplace since enactment of the 1987 Act. This commenter requested FCA to require notification to the borrower of the fair market value of the property even if it is to be sold at public auction, and to require that a minimum bid must always be specified. FCA believes such requirements go beyond those in the statute and has not adopted these suggestions.

Part 615—Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

Subpart J—Prescription, Subscription and Retirement of Stock

In order to implement the provisions of new section 4.14B of the Act, it is proposed to add three new paragraphs, (e), (f), and (g) to § 615.5255. Paragraphs (e) and (f) address the cancellation of stock by an FLB and FLBA, or by a PCA in the event principal is forgiven in the

course of a restructuring under new § 614.4516. Paragraph (g) provides that a borrower shall be entitled to retain at least one share of stock to maintain membership and voting rights in the association.

Part 618—General Provisions

Subpart G—Releasing Information

In order to implement the provisions of new section 4.12A of the Act, "Communications with Stockholders", it is proposed to revise § 618.8310(b)(1) to provide that System institutions will make stockholder lists available within 7 days of receipt of a request from a stockholder. No other changes are proposed to the language of that section.

It is also proposed to amend § 618.8320(b) to add a new paragraph numbered (9) which would authorize release of data concerning borrowers and loan applicants to the appropriate District Special Asset Group, if any, and the National Special Asset Council upon the request of either of these entities.

To implement the new provisions of section 4.13A of the Act, "Access to Documents and Information," it is proposed to revise § 618.8325(a) to add new definitions of "loan" and "qualified lender." Paragraph (b) is revised to substitute qualified lender wherever "bank or association" is used in the existing regulation. Paragraph (b) is further revised to include the requirement to furnish a copy of each appraisal of the borrower's assets made or used by the qualified lender. In response to comments received, the FCA also proposes to add language that one copy of the documents shall be furnished free of charge to the borrower but that the lender may assess reasonable copying charges for any additional copies requested by the borrower. One commenter suggested that appraisal documents only need be provided to one primary obligor. However, FCA believes it is appropriate to furnish each borrower, as that term is defined in this section, with a copy of any appraisal of that borrower's assets. Another commenter suggested that a request from a borrower for a copy of "my appraisal" should be interpreted to mean only the most recent appraisal. Since the statute provides that copies of documents shall be provided at the request of the borrower, FCA believes the language of the borrower's request would control what documents would be responsive to that request. Since the statute also clearly says "copies of each appraisal," FCA believes it would be contrary to legislative intent to narrowly interpret the language of a request to mean only the most recent appraisal, unless such an interpretation is clearly intended by the borrower. FCA acknowledges the time and expense to the qualified lender in order to comply with this statutory provision but believes these expenses must be construed as business expenses pursuant to the Act. Finally, comments were received on the need to protect confidential information used by the lender in the appraisal process, such as information on the value of other borrowers' property, private sales of acquired property, and benchmark comparables obtained under a pledge of confidentiality. The FCA invites comments on whether and how to limit disclosure of such information in the regulation or whether this issue can more appropriately be addressed on an individual basis.

Finally, the notice published on February 16, 1988 (53 FR 4417) requested comment on whether a public hearing would contribute to the FCA's consideration of these topics. Three comments were received, two in support of such a hearing and one which indicated a hearing was not necessary. It is anticipated that a hearing will be scheduled.

List of Subjects in 12 CFR Parts 614, 615, and 618

Agriculture, Banks, Banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas, Accounting, Government securities, Investments, Archives and records, Insurance, Technical assistance.

For the reasons stated in the preamble, Parts 614, 615, and 618 of Chapter VI of Title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 is revised to read as follows:

Authority: 12 U.S.C. 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2219b, 2243, 2252(a)(10).

2. Subparts K and L, consisting of §§ 614.4365 through 614.4368 and 614.4440 through 614.4444, are revised to read as follows:

Subpart K—Disclosure of Loan Information

Sec.

614.4365 Applicability.
614.4366 Definitions.
614.4367 Required disclosures—in general.
614.4368 Disclosure of differential interest rates.

Subpart K—Disclosure of Loan Information

§ 614.4365 Applicability.

This subpart applies only to loans from qualified lenders if the loans are not subject to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

§ 614.4366 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) "Adjustable rate loan" means a loan on which the interest rate payable over the term of the loan may be changed by a qualified lender. The term includes loans which are titled "adjustable rate" or "variable rate" or any other similar designation.

(b) "Effective interest rate" means the interest rate applicable to the loan at a point in time, adjusted to take into consideration the amount, as a percentage of the initial net proceeds of the loan, of any stock or participation certificates which the borrower must purchase pursuant to bylaw, policy or regulation in order to obtain the loan, and any loan origination charges.

(c) "Fixed rate loan" means any loan on which the interest rate is not subject to adjustment or variation over the term of the loan, even though the effective interest rate on the loan may be so subject.

(d) "Interest rate" means the stated contract rate of interest applicable to the loan at a point in time, excluding any charges payable by the borrower in obtaining the loan.

(e) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(f) "Loan origination charges" mean initial one-time transaction charges or fees, which may or may not be computed as a percentage of the transaction amount, and which are imposed on a borrower by a qualified lender to obtain a loan, but do not include charges imposed by someone other than the lender for services that are not required by the lender.

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (e) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

(h) "Standard adjustments factors" means those financial elements, including but not limited to, a qualified lender's cost of funds, operating expenses, provision for loan losses, and changes in retained earnings, which are typically taken into consideration by a qualified lender in adjusting the interest rate on loans.

§ 614.4367 Required disclosures—in general.

(a) Each qualified lender shall furnish the following information in writing to a prospective borrower not later than the time of the loan closing:

(1) The current rate of interest on the loan;

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the term of the loan or, if there are no limitations on the amount or frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan;

(3) The current effective interest rate on the loan with one or more representative examples of the impact of stock or participation certificate ownership and applicable loan origination charges on the current interest rate computed on an annualized basis;

(4) Except with respect to stock guaranteed under section 4.9A of the Act, a statement indicating that stock that is purchased is at risk;

(5) A statement indicating the various types of loan options available to borrowers, with an explanation of the terms and borrower's rights that apply to each type of loan.

(b) For loans that will or may be pooled for sale on the secondary market created under section 8.9 of the Act, in addition to the loan disclosure in paragraph (a) of this section, at the time of application for a loan, a qualified lender shall provide the following:

(1) Notification that the loan will or may be pooled;

(2) Notification that, if the loan will be pooled, the borrower will be required to execute at closing a waiver of his right to have the loan considered for restructuring under Title IV of the Act and 12 CFR Part 614, with a statement that rights, if any, under applicable State laws are not waived;

(3) Notification that the borrower has the right not to have his loan pooled;

(4) Notification that, within 3 days of commitment, the applicant has the right to refuse to allow the loan to be pooled, thereby retaining any restructuring rights later applicable to his loan; and

(5) Notification of any other terms and conditions that may apply to a loan which will or may be pooled that differ from a loan which is not pooled.

(c) Each qualified lender that adjusts the interest rate on an outstanding loan shall furnish the following information in writing to the borrower:

(1) The new interest rate on the loan;

(2) The date on which the new rate is effective; and

(3) A statement of any factors other than standard adjustment factors which were taken into account in establishing the new interest rate. The notice required by this paragraph shall be made not later than the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase in the interest rate.

(d) Each qualified lender that takes any action which changes the amount of stock or participation certificates which borrowers are required to own and that modifies the effective interest rate on a loan shall furnish the following information in writing to the borrower at least 10 days before the date on which such action takes effect:

(1) The new effective interest rate;

(2) The date on which the new rate is effective; and

(3) A statement of the action(s) taken by the qualified lender that have resulted in the new effective interest rate.

(e) In the case of a loan involving more than one primary obligor, the requirements of paragraphs (a) through (d) of this section will be satisfied by providing the disclosure to any one of such parties.

Appendix to 12 CFR 614.4367—Required Disclosure

Model Disclosure Forms

General

The following are model disclosure forms which System institutions may use to satisfy the notification requirements of section 4.13(a) of the Act and of 12 CFR 614.4367. The forms have been developed in order to give System institutions an idea of the type and extent of information that should be contained therein. System institutions are not required to follow the format of the sample forms. System institutions may develop and use other forms provided the statements contain comparable disclosures in clear, understandable English and otherwise meet the requirements of the Act and regulations.

Form 1

This loan it *NOT* subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Interest Rate Disclosure

Date: _____

Lender: _____

(Name)

Stated Interest Rate

The rate of interest currently applicable to your loan

(Percentage) _____

Borrower: _____

(Name)

Effective Interest Rate [1]

The stated rate of interest adjusted to take into account loan origination charges and purchase of stock

(Percentage) _____

Check Applicable Box

☐ This is a FIXED RATE LOAN—the stated rate of interest is not subject to change during the life of the loan.

☐ This is an ADJUSTABLE RATE LOAN—the stated rate of interest is subject to change during the life of the loan.

If an Adjustable Rate Loan—

The interest rate on the loan may be changed (*Period*).

The interest rate may be changed a maximum ± (*Percentage*).

The Standard Adjustment Factors may ☐ or may not ☐ be changed during the life of the loan.

Except with respect to stock guaranteed under section 4.9A of the Farm Credit Act of 1971, stock that is purchased in this institution is at risk.

See your contract documents for further information on loan terms and conditions.

Should you have any questions concerning the information contained in this form please contact us at (*Telephone Number*).

Form 2

This loan is not subjected to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Disclosure of a Change in the Effective Interest Rate

Date: _____

Lender: _____

(Name)

Borrower: _____

(Name)

This is to inform you that on *(loan and loan number),*

☐ The effective rate of interest will be adjusted effective *(Date).*

The effective rate of interest on your loan is changed to *(Percentage)* from *(Percentage).*

This change resulted from a:

☐ 1. Change in the amount of stock borrowers are required to hold in the lender to *(Percentage)* from *(Percentage).*

☐ 2. Change in the stated rate of interest on your loan effective *(Date).*

[1] This is a projection subject to change should particular loan provisions be modified during the term of the loan, such as the amount of stock or participation certificates held or the timing of repayment.

You will be notified 10 days prior to any increase in the effective rate or simultaneously with any decrease in the effective rate. The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate is (are) (*list the factors*).

The stated rate of interest on your loan changed to *(Percentage)* from *(Percentage)*.

The change was computed based on the:

☐ Standard adjustment factors—factors mentioned on the initial interest rate disclosure.

☐ Other—describe.

☐ 3. Change for other reasons—describe.

Should you have any questions concerning the information contained herein, please contact us at *(Telephone Number)*.

§ 614.4368 Disclosure of differential interest rates.

A qualified lender offering more than one rate of interest to borrowers shall, at the request of a borrower:

(a) Provide a review of the loan to determine if the proper interest rate has been established;

(b) Explain to the borrower in writing the basis for the interest rate charged; and

(c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Subpart L—Actions on Applications; Review of Credit Decisions

Sec.

614.4440 Definitions.
614.4441 Notice of action on loan application.
614.4442 Credit review committee.
614.4443 Review process.
614.4444 Records.

Subpart L—Actions on Applications; Review of Credit Decisions

§ 614.4440 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) "Adverse credit decision" means a decision to deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for; to deny an application for restructuring; or to deny a request to return a nonaccrual loan to accrual status.

(b) "Applicant" means any person who completes and executes a formal application for an extension of credit from a qualified lender, or a borrower who completes an application for restructuring or who requests return of a nonaccrual loan to accrual status.

(c) "Application for restructuring" means a written request—

(1) from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(2) submitted on the appropriate forms prescribed by the qualified lender; and

(3) Accompanied by sufficient financial information and repayment projections, where appropriate, as normally required by the qualified lender to support a sound credit decision.

(d) "Distressed loan" means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract;

(3) One or both of the factors listed in paragraphs (d) (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(e) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(f) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (e) of this section) except a bank for cooperatives;

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) (as of July 5, 1988).

(g) "Restructure" and "restructuring" means rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, or the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

§ 614.4441 Notice of action on loan application.

Each qualified lender shall render its decision on a loan application in as expeditious a manner as is practicable. Upon reaching a decision on a loan application, the qualified lender shall provide prompt written notice of its decision to the applicant. In the case of a loan application involving more than one primary obligor, the notice may be provided to any one of such parties. Where the qualified lender makes an adverse credit decision, the notice shall include:

(a) The reasons for the qualified lender's action;

(b) Notification that the applicant can request a review of the decision;

(c) Notification that any request for review must be made in writing within 30 days after the applicant's receipt of the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the right to appear before the credit review committee.

§ 614.4442 Credit review committee.

The board of directors of each qualified lender shall establish one or more credit review committees to review adverse credit decisions made by the lender. The membership of each committee shall include at least one member from the lender's board. In no case shall a loan officer involved in the adverse credit decision on the loan being reviewed serve on the credit review committee when the committee reviews such loan. The duties of the members of the credit review committee may not be delegated to any other person, except that the credit review committee duties of the board member may be performed from time to time by an alternate designated by the board who shall also be a board member.

§ 614.4443 Review process.

(a) *Personal appearance.* Each applicant or borrower who is entitled to and has requested a review may appear in person before the credit review committee. The applicant or borrower may be accompanied by counsel and/or by any other representative of choice, to seek a reversal of the decision on the application under review.

(b) *Documentation.* An applicant may submit any documents or other evidence to support the information contained in the unsuccessful loan application which the applicant believes will demonstrate that the loan applied for is an eligible loan that satisfies the credit standards of the lender.

(c) *Independent appraisals.* An applicant for a loan or a borrower who has applied for a restructuring and for which additional collateral was demanded by the lender when determining whether to restructure the loan may, as a part of the request for a review, request an independent appraisal, by an accredited appraiser, of any interests in property securing the loan (other than the stock or participation certificates of the lender held by the borrower). Within 30 days after a request for an appraisal, the credit review committee shall—

(1) Present the applicant or borrower with a list of three accredited appraisers approved by the qualified lender from which the borrower shall select an appraiser to conduct the appraisal, the cost of which shall be borne by the applicant or borrower;

(2) Provide a copy of the appraisal to the applicant or borrower;

(3) Consider the results of any such appraisal in any final determination with respect to the loan or restructuring.

(d) *Decision.* The credit review committee shall reach a decision on the

application in its sole discretion, and such decision shall be the final decision of the lender. The credit review committee shall make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. Promptly after a review by the credit review committee, the committee shall notify the applicant or borrower in writing of the decision of the committee and the reasons for the decision.

§ 614.4444 Records.

A qualified lender shall maintain a complete file of all requests for reviews by the credit review committee, including participation in State mediation programs, and the disposition of each review by the committee. A qualified lender shall also maintain sufficient materials to permit the Special Asset Group in its district, if any, under § 614.4520 to review each determination not to restructure a loan and to permit the National Special Asset Council to review any loan for which it requests information.

3. The heading of Subpart N is revised to read as follows:

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

4. Subpart N is amended by adding a new § 614.4512 to read as follows:

§ 614.4512 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) "Application for restructuring" means a written request—

(1) From a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(2) Submitted on the appropriate forms prescribed by the qualified lender; and

(3) Accompanied by sufficient financial information and repayment projections, where appropriate, as normally required by the qualified lender to support a sound credit decision.

(b) "Certified lender" means a qualified lender that has been certified for financial assistance under section 6.4 of the Act.

(c) "Cost of foreclosure" means:

(1) The difference between the outstanding balance due as provided by the loan documents on a loan made by a qualified lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(2) The estimated cost of maintaining a loan as a nonperforming asset;

(3) The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(4) The estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose of liquidate the loan and ending on the date of the disposition of the collateral; and

(5) All other costs incurred as the result of the foreclosure or liquidation of a loan.

(d) "Distressed loan" means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract;

(3) One or both of the factors listed in paragraphs (d)(1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(e) "Foreclosure proceeding" means:

(1) A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

(2) The seizing of and realizing on non-real property collateral, other than collateral subject to a statutory lien arising under title I or II of the Act to effect collection of a nonaccrual of distressed loan.

(f) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(g) "Qualified lender" means:

(1) A System institution that makes loans (as defined in paragraph (f) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988), but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

(h) "Restructure" or "restructuring" means rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

5. Section 614.4513 is revised to read as follows:

§ 614.4513 Advance payment accounts.

(a) Borrowers may make voluntary advance payments on their loans or, under agreement with a qualified lender, may make voluntary advance conditional payments to be applied to future maturities or to be available for return to the borrower for purposes for which the lender would increase their existing loans. Lenders may pay interest on advance conditional payments for the time the funds are held unapplied at a rate not to exceed the rate charged on the related loan(s). Qualified lenders shall hold any advance conditional payments received in accordance with this section in voluntary advance payment accounts.

(b) Qualified lenders maty establish involuntary payment accounts including, but not limited to, funds held for the borrower, such as loan proceeds to be disbursed for which the borrower is obligated; the unapplied insurance proceeds arising from any insured loss; and total insurance premiums and applicable taxes collected in advance in connection with any loan.

§ 614.4520 [Redesignated as § 614.4525]

6. Subpart O is amended by redesignating § 614.4520 as § 614.4525.

7. Subpart N is amended by adding new §§ 614.4514–4522 to read as follows:

§ 614.4514 Protection of borrowers who meet all loan obligations.

(a) A qualified lender may not foreclose on any loan because of the failure of the borrower to post additional collateral, if the borrower has made all accrued payments of principal, interest, and penalties with respect to the loan.

(b) A qualified lender may not require any borrower to reduce the outstanding principal balance of any loan made to the borrower by any amount that exceeds the regularly scheduled principal installment payment (when due and payable), unless:

(1) The borrower sells or otherwise disposes of part or all of the collateral; or

(2) The parties agree otherwise in a written agreement entered into by the parties.

(c) After a borrower has made all accrued payments of principal, interest, and penalties with respect to a loan made by a qualified lender, the lender shall not enforce acceleration of the borrower's repayment schedule due to the borrower having not timely made one or more principal and/or interest payments.

(d) If a qualified lender places any loan in nonaccrual status and such action results in an adverse action being taken against the borrower, such as revocation of any undisbursed loan commitment, the lender shall document such change of status and promptly notify the borrower in writing of such action and the reasons therefor. If the borrower was not delinquent in any principal or interest payment under the loan at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of such denial before the appropriate credit review committee under § 614.4443.

§ 614.4515 Restructuring policy and reporting.

(a) Loan restructurings are to be accomplished in accordance with:

(1) The policy adopted by the district board of directors under section 4.14A(g) of the Act;

(2) Any restructuring plan required by the District Special Asset Group under section 4.14C(b)(2) of the Act, if applicable.

(b) Beginning on July 6, 1988, and every 6 months thereafter until January 6, 1993, each qualified lender shall submit semiannual reports to the Farm Credit Administration containing:

(1) The results of its review of its distressed loans, conducted in order to determine which loans are suitable for restructuring; and

(2) The financial effect of loan restructurings and liquidations on the lender.

§ 614.4516 Restructuring procedures.

(a) *Notice.* On a determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring, and include with such notice:

(1) A copy of the policy of the lender established under section 4.14A(g) of the Act that governs the treatment of distressed loans; and

(2) All materials necessary to enable the borrower to submit an application for restructuring on the loan. Such notice shall be provided not later than 45 days before a qualified lender begins foreclosure proceedings with respect to any such loan outstanding to the borrower. In the case of a loan involving more than one primary obligor, the requirements of this section will be satisfied by providing the notice to any one of such parties.

(b) *Opportunity for meeting.* The lender shall provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender:

(1) To review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring; and

(2) With respect to a loan that is in nonaccrual status, to develop a plan for restructuring the loan if the loan is suitable for restructuring as determined by the qualified lender.

(c) *Voluntary consideration of restructuring.* A qualified lender may, in the absence of an application for restructuring from a borrower, propose a restructuring plan for an indivudual borrower.

§ 614.4517 Restructuring decision.

(a) *Consideration of application.* When a qualified lender receives an application for restructuring from a borrower, the lender shall determine whether or not to restructure the loan, taking into consideration:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure;

(2) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(3) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(4) Whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in nonaccrual status.

(b) *Required restructuring.* If a qualified lender determines that the potential cost to the lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan. If two or more restructuring alternatives are available to a qualified lender with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

(c) *Evaluation of cost restructuring.* In determining whether the potential cost to a qualified lender of a restructuring plan is less than or equal to the potential cost of foreclosure, a qualified lender shall consider all relevant factors, including:

(1) The present value of interest and principal foregone by the lender in carrying out the restructuring plan;

(2) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(3) Whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(4) Whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution.

§ 614.4518 Notice of denial of restructuring and right to review.

Each qualified lender shall render its decision on an application for restructuring in as expeditious a manner as is practicable. Upon reaching a decision on a restructuring application, the lender shall provide prompt written notice of its decision to the borrower. In the case of a loan involving one or more primary obligors, the notice may be provided to any one of such parties. Where an application for restructuring is denied, the notice shall include:

(a) The reason(s) for the denial;

(b) Notification that the borrower may request a review of the denial;

(c) Notification that any request for such review must be made in writing within 7 days after receiving such notice;

(d) A brief explanation of the process for seeking review of the denial, including whom to contact at the lender for access to information; and the right to appear before the credit review committee, established pursuant to § 614.4442, accompanied by counsel and/or by any other representative, if the borrower so chooses.

§ 614.4519 Notice before foreclosure; limitation on foreclosure.

(a) Not later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower, the lender shall notify the borrower that the loan may be suitable for restructuring and that the lender will review any such suitable loan for possible restructuring, and shall include with such notice a copy of the policy and the materials described in § 614.4516(a)(2).

(b) No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this subpart, and completion of credit review committee consideration, if applicable. This section shall not prevent a lender from taking any action necessary to avoid the dissipation of assets, or the destruction, diversion or deterioration of collateral.

(c) Any foreclosure proceeding which is commenced by a certified lender after the lender's credit review committee has rejected a borrower's appeal on a restructuring application must be terminated if the Special Asset Group in its district prescribes a restructuring plan to the lender which the borrower accepts.

§ 614.4520 Review of restructurings for certified institutions; reporting.

(a) Within 9 months after a qualified lender is certified under section 6.4 of the Act, such lender shall review each loan that has not been previously restructured and that is in nonaccrual status on the date the lender is certified, and shall determine whether to restructure the loan. Within 6 months after a loan made by a certified lender is placed in nonaccrual status, the lender shall determine whether to restructure the loan.

(b) Within 30 days after a qualified lender in a district is certified to issue preferred stock under section 6.27 of the Act, the district board of such district or the board of directors of the Farm Credit Bank, as the case may be, shall establish a special asset group that shall review each determination by the lender not to restructure a loan. If a Special Asset Group determines that a loan under review should be restructured, the group shall prescribe a restructuring plan for the loan that the qualified lender shall implement if the borrower agrees.

(c) The National Special Asset Council, established by the Farm Credit System Assistance Board, will:

(1) Under section 4.14C(c) of the Act monitor compliance with the restructuring requirements of this subpart by qualified lenders certified to issue preferred stock under section 6.27 of the Act, and by Special Asset Groups established under paragraph (b) of this section; and

(2) Review a sample of determinations made by each special asset group that a loan will not be restructured.

(d) With respect to determinations by a Special Asset Group that a loan will not be restructured, the Special Asset Group shall submit to the National Special Asset Council a report evaluating the loan and the basis for the determination that the loan should not be restructured.

(e) The National Special Asset Council will review a sufficient number of determinations made by each Special Asset Group to foreclose on any loan to assure the Council that such group is complying with this subpart. With regard to each determination reviewed, the Council shall make an independent judgment on the merits of the decision to foreclose rather than restructure the loan.

(f) If the National Special Asset Council determines that any Special Asset Group is not in substantial compliance with this subpart, the Council will notify the group of the determination, and take such other action as the Council considers necessary to ensure that such group complies with this subpart.

(g) In determining whether a loan is to be restructured, each qualified lender certified under section 6.4 of the Act, and each Special Asset Group, shall take into consideration the factors specified in § 614.4517. The National Special Asset Council is required by statute to consider these same factors.

§ 614.4521 Participation in State agricultural loan mediation programs.

(a) If initiated by a borrower, System institutions shall, either concurrently with loan restructuring under § 614.4517 or at any other appropriate time, participate in State mediation programs certified under section 503(b) of the Agricultural Credit Act of 1987, and shall present and explore debt restructuring proposals advanced in the course of such mediation. If provided in the certified program, System institutions may initiate mediation at any time.

(b) System institutions shall cooperate in good faith with requests for information or analysis of information made in the course of mediation under any such loan mediation program.

(c) No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any State.

§ 614.4522 Right of first refusal.

(a) For purposes of this section, in addition to the definitions in § 614.4512, the following definitions shall apply:

(1) "Acquired property" means agricultural real estate acquired by an institution of the System as a result of a loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution does not have the financial resources to avoid foreclosure;

(2) "Previous owner" means a borrower from a System institution who did not have the financial resources, as determined by the institution, to avoid foreclosure on agricultural real estate.

(b) Upon acquiring agricultural real estate as a result of a loan foreclosure or voluntary conveyance by a borrower, the System institution shall determine whether the borrower had the financial resources to avoid foreclosure and document this determination in the file for the acquired property.

(c) Except as provided in paragraph (e) of this section, System institutions electing to sell acquired property of a previous owner, as defined in this section:

(1) Shall notify the previous owner by certified mail, within 15 days of the decision to sell the property, of the appraised fair market value of the property as established by an accredited appraiser and of the right:

(i) To purchase the property at the appraised fair market value, or

(ii) To offer to purchase the property at a price less than the appraised value.

The notice shall inform the previous owner that any offer must be received within 15 days of receipt of the notification.

(2) Shall accept an offer from the previous owner to purchase the property at the appraised value, within 30 days after the receipt of such offer, and sell the property to the previous owner, if the offer was received within 15 days of the notification required in paragraph (c)(1) of this section.

(3) Shall consider an offer from a previous owner to purchase the acquired property at a price less than the appraised value, if the offer was received within 15 days of the notification required in paragraph (c)(1) of this section. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not sell the property to any other person:

(i) At a price equal to, or less than, that offered by the previous owner; or

(ii) On different terms or conditions than those that were extended to the previous owner; without first notifying the previous owner by certified mail and providing an opportunity to purchase the property at such price or under such terms and conditions.

The previous owner shall have 15 days from receipt of the notification to submit an offer to purchase at such price or under such terms and conditions.

(4) For purposes of this section, financing by the System institution shall not be considered a term or condition of the sale of acquired real estate. A System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(d) Except as provided in paragraph (e) of this section, System institutions electing to lease acquired property, or any portion of such real estate, of a previous owner, as defined in this section:

(1) shall notify the previous owner by certified mail, within 15 days of the decision to lease, of the appraised rental value of the property, as established by an accredited appraiser, and of the right to

(i) Lease the property at a rate equivalent to the appraised rental value of the property, or

(ii) To offer to lease the property at rate that is less than the appraised rental value of the property.

The notice shall inform the previous owner that any offer must be received within 15 days of receipt of the notification.

(2) Shall accept an offer from a previous owner to lease the property at the appraised value, within 15 days after the receipt of such offer, and lease the property to the previous owner, unless the institution determines that the previous owner:

(i) Does not have the resources available to conduct a successful farming or ranching operation; or

(ii) Cannot meet all of the payments, terms and conditions of such lease.

(3) Shall consider an offer from a previous owner to lease the property at a rate that is less than the appraised rental value of the property. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not lease the property to any other person:

(i) At a rate equal to or less than that offered by the previous owner; or

(ii) On different terms and conditions than those that were extended to the previous owner, without first notifying the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

The previous owner shall have 15 days after receipt of the notification in which to agree to lease the property at such rate or under such terms and conditions.

(e) System institutions electing to sell or lease acquired property or a portion thereof through a public auction, competitive bidding process, or other similar public offering:

(1) Shall notify the previous owner, by certified mail, of the availability of such property. Such notice shall contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms or conditions to which such sale or lease will be subject;

(2) If two or more qualified bids in the same amount are received by the institution, such bids are the highest received, and one of the qualified bids is from the previous owner, the institution shall accept the offer by the previous owner; and

(3) Shall not discriminate against a previous owner.

(f) Each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the former borrower.

(g) The rights provided under section 4.36 of the Act, and this section, shall not diminish any right of first refusal under the law of the State in which the property is located.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

8. The authority citation for Part 615 is revised to read as follows:

Authority: 12 U.S.C. 2154, 2202(b), 2243, 2252.

Subpart J—Prescription, Subscription and Retirement of Stock

9. Section 615.5255 is amended by adding new paragraphs (e), (f) and (g) to read as follows:

§ 615.5255 Notice of retirement of capital stock and participation certificates.

* * * * *

(e) If a Federal land bank forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and the Federal land bank shall retire an equal amount of stock owned by the Federal land bank association.

(f) If a production credit association forgives and writes off, under § 614.4517, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

(g) Notwithstanding paragraphs (e) and (f) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest.

PART 618—GENERAL PROVISIONS

10. The authority citation for Part 618 is revised to read as follows:

Authority: 12 U.S.C. 2183, 2200, 2243, 2244, 2252.

Subpart G—Releasing Information

11. Section 618.8310 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

§ 618.8310 Lists of borrowers and stockholders.

* * * * *

(b)(1) Within 7 days after receipt of a written request by a stockholder, each bank for cooperatives, Federal land bank association, production credit association, merged association, or Farm Credit Bank shall provide a current list of its stockholders to such requesting stockholder. As a condition to providing the list, the bank or association may require that the stockholder agree and certify in writing that the stockholder will:

* * * * *

12. Section 618.8320 is amended by adding a new paragraph (b)(9) to read as follows:

§ 618.8320 Data regarding borrowers and loan applicants.

* * * * *

(b) * * *

(9) Any information relating to a loan to a borrower which has been considered for restructuring under § 614.4517 may be provided to the District Special Asset Group, if any, and the National Special Asset Council, upon the request of either of these entities.

* * * * *

13. Section 618.8325 is amended by revising paragraphs (a) and (b) to read as follows:

§ 618.8325 Disclosure of loan documents.

(a) For purposes of this section, the following definitions shall apply:

(1) "Borrower" means any signatory to loan contract who is either primarily or secondarily liable on such contract, including guarantors, endorsers, cosigners or the like.

(2) "Execution of the loan" means the time at which the borrower and the qualified lender have entered into a legal, binding, and enforceable loan contract and any subsequent amendment or modification of such contract.

(3) "Loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(4) "Loan contract" means any written agreement under which a qualified lender lends or agrees to lend funds to a borrower in consideration for, among other things, the borrower's promise to repay the loaned funds at an agreed-upon rate of interest.

(5) "Loan document" means any form, application, agreement, contract, instrument, or other writing to which a borrower affixes his or her signature or seal and which the qualified lender intends to retain in its files as evidence relating to the loan contract entered into between it and the borrower, but shall not include any document related to a loan which the borrower has not signed.

(6) "Qualified lender" means:

(i) a System institution that makes loans (as defined in paragraph (a)(3) of this section) except a bank for cooperatives; and

(ii) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act (as of July 5, 1988) but only with respect to loans discounted or pledged under section 1.7(b) of the Act (as of July 5, 1988).

(b) Each qualified lender shall provide a copy of all loan documents to the borrower or the borrower's legal representative at the execution of the loan. Subsequently, upon written request of a borrower or a borrower's legal representative, a qualified lender shall provide, as soon as practicable, a copy of any loan documents signed by the borrower, a copy of other documents delivered by such borrower to that qualified lender, and a copy of each appraisal of the borrower's assets made or used by the qualified lender. One copy shall be furnished free of charge. The lender may assess reasonable copying charges for any additional copies requested by the borrower.

* * * * *

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR. Doc. 88-10192 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Parts 615 and 618

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) proposes for comment an amendment to 12 CFR Part 615, Subpart H that establishes minimum permanent capital standards for Farm Credit System (System) institutions. The amendment implements section 301(a) of the Agricultural Credit Act of 1987, which directs the FCA to issue regulations under section 4.3(a) of the Farm Credit Act of 1971, establishing minimum permanent capital standards expressed as a ratio of capital to assets that takes into account relative risk factors. The regulation provides for a relative weighting of assets on the basis of risk and establishes a minimum ratio of permanent capital to weighted assets that would be phased in over 5 years. The proposed regulation also sets forth the factors that should be considered in developing plans to achieve capital adequacy for each Farm Credit System institution. The FCA proposes to remove existing § 615.5210 and add it to Part 618 as § 618.8440. The FCA also proposes to remove and reserve §§ 615.5220 and 615.5240 of Subpart I, which set forth debt to capital ratios required under prior law. The FCA withdraws capital adequacy regulations that were published for comment on July 23, 1986 (51 FR 26402), prior to the enactment of the 1987 Act. These proposed regulations would have the effect of requiring System institutions to meet the minimum permanent capital adequacy levels specified in the regulations.

DATES: Comments must be submitted on or before June 10, 1988. A public hearing is scheduled for June 9, 1988. See the "Final Notice of Hearings" published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Comments and requests to testify may be mailed (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration. For address of public hearings see the "Final Notice of Hearings" published elsewhere in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4402,

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On July 23, 1986, the Farm Credit Administration (FCA) published for comment proposed regulations (51 FR 26402) relating to capital adequacy and minimum capital for Farm Credit System (System) institutions pursuant to section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2154. The proposed regulation would have established regulatory zones based on capital levels, within which System institutions would have been authorized to take a number of actions that previously required FCA approval. Such actions included the establishment of interest rates, payment of dividends and distribution of earnings. On October 16, 1986, the FCA published for comment proposed conforming amendments to Parts 614 and 615 (capital adequacy related regulations) (51 FR 36824).

On January 6, 1988, the Agricultural Credit Act of 1987, Pub. L. 100-233 (1987 Act) was enacted, amending the 1971 Act to alter significantly the capital structure of Farm Credit banks and associations and to delete many previously required prior approvals by the FCA. System banks and associations have greater flexibility to determine their capital structure and develop sources of "at-risk" capital than they previously had. In addition, the 1987 Act makes significant structural changes in the System, requiring mergers among the Federal land banks (FLBs) and the Federal intermediate credit banks (FICBs) in each district and permitting mergers among all banks within a district, among banks for cooperatives (BCs), among production credit associations (PCAs), and Federal land bank associations (FLBAs) within a district, and between certain institutions in different districts. In addition, Federal

land bank associations may become direct lenders.

As a result of these statutory changes, described more fully below, the FCA has determined that the capital adequacy regulations proposed for comment on July 23, 1986, are no longer appropriate and hereby withdraws them. The capital adequacy related regulations are similarly affected and the FCA will determine in the near future what adjustments need to be made in the current regulations and the proposed amendments.

I. Agricultural Credit Act of 1987 (1987 Act)

The 1987 Act makes significant changes in the capital structure of Farm Credit banks and associations (collectively "institutions"). New capitalization bylaws are required to be developed implementing the statutory changes. See section 301(b) of the 1987 Act. The bylaws do not require FCA prior approval, but must enable the institution to meet the minimum capital adequacy standards established by the FCA and must have majority stockholder approval.

The statutory requirement to purchase stock is reduced from 5 percent to 2 percent of $1,000, whichever is less, although the institution may require more under its bylaws. Such stock need not be retired upon repayment of the loan or otherwise at the option of the borrower; retirement must be solely at the discretion of the board of directors. No retirement can be made unless the institution meets the minimum capital adequacy standards established by the FCA under section 4.3(a) of the 1971 Act. Voting stock may only be held by borrowers who are farmers, ranchers, producers or harvesters of aquatic products, and eligible cooperatives; non-voting stock may be issued to non-borrowers. Voting stock must be converted to non-voting stock within 2 years of loan repayment. All stock is freely transferable.

A distinction is made between the new "at-risk" stock and "eligible borrower stock," which is protected from impairment. Section 201 of the 1987 Act amends the 1971 Act to add a new section 4.9A, which requires the institution to retire such protected "eligible borrower stock" at par value upon repayment of the loan, whether or not such stock is impaired. Section 201 also provides for such impairments to be cured with Federal financial assistance, which is exchanged for preferred stock issued to the Farm Credit System Assistance Corporation, an entity created by the 1987 Act. "Eligible borrower stock" is defined as stock, participation certificates and allocated equities, issued or allocated to persons other than Farm Credit System institutions, and which was outstanding on the date of enactment or issued after enactment as a condition of obtaining a loan but before the earlier of 9 months from enactment or the date the institution adopts capitalization bylaws under the 1987 Act. The bylaws must require holders of eligible borrower stock to exchange a portion of it for new, at-risk stock.

Section 4.3(a) of the 1971 Act, added in 1985, requires the FCA to adopt minimum capital standards for Farm Credit System institutions and empowers the FCA to issue directives to institutions that fail to maintain capital at or above the minimum standard, in addition to any other enforcement powers available to the FCA. Such directives may require the institution to develop and adhere to a plan that would enable the minimum capital standard to be met. In addition, the FCA is allowed, in its discretion, to consider such a failure an unsafe and unsound condition and to consider the institution's progress toward meeting the standard when considering whether to give prior approvals required under the 1971 Act to any proposal to divert earnings or otherwise impede the institution's progress in meeting its minimum capital level. Section 4.3(b)(3); 12 U.S.C. 2154.

While the 1987 Act eliminated many required prior approvals by the FCA, the provisions of section 4.3(a) of the 1971 Act were not changed. However, section 301(a) of the 1987 Act directs the FCA to issue regulations under section 4.3(a) establishing for Farm Credit System institutions minimum "permanent capital" standards that specify fixed percentages representing the ratio of permanent capital of the institution to the assets of the institution, taking into consideration relative risk factors, as determined by the FCA. Minimum permanent capital standards are required to be phased in over a 5-year period and must be based on financial statements of the institutions prepared in accordance with generally accepted accounting principles (GAAP).

"Permanent capital" is defined as "current year retained earnings, allocated and unallocated earnings, all surplus (less allowances for losses), and stock issued by a System institution, except stock that—

(A) May be retired by the holder thereof on repayment of the holder's loan, or otherwise at the option or request of the holder; or

(B) Is protected under section 4.9A or is otherwise not at risk."

Section 4.3A(a)(1) of the 1971 Act, added by section 301(b) of the 1987 Act. "Stock" is defined to mean "voting and nonvoting stock (including preferred stock), equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other forms and types of equities." Section 4.3A(a)(2) of the 1971 Act, as amended.

The effect of these definitions is to include within permanent capital all capital in System institutions except that which is protected under section 4.9A of the 1971 Act, as amended, or is otherwise not at risk, and that which must be retired upon repayment of the loan or otherwise at the option of the borrower.

In response to the statutory directive to issue regulations under section 4.3(a) of the 1971 Act establishing minimum permanent capital standards, the FCA issued an Advance Notice of Proposed Rulemaking (ANPRM) on February 17, 1988 (53 FR 4642), requesting comment on a proposed approach that would be similar to the risk-adjusted capital proposals of other Federal bank regulatory agencies and on a number of related issues. The comment period closed on March 1, 1988.

Comments were received from the Farm Credit Corporation of America (FCCA) on behalf of the 37 Farm Credit banks, several individual Farm Credit districts, a number of production credit associations and Federal land bank associations, the American Bankers Association, the United States League of Savings Institutions, and the National Farmers Union. A summary of the issues raised in the ANPRM and the comments received follows.

II. Summary of Comments

A. Level of Required Minimum Permanent Capital

The FCA stated in the ANPRM that capital must be sufficient to protect investors, minimize the risk of insolvency and provide for current and future needs, including protection against risks inherent in concentrated, single-industry lending in fixed geographic territories, and that minimum capital ratios should generally be higher than those set or proposed for more diversified financial institutions.

Two Farm Credit districts, the American Bankers Association and the United States League of Savings Institutions supported the FCA's contention that capital levels should be generally higher for single-industry lenders with a lack of geographic diversification. One Farm Credit district asserted that capital levels even far in

excess of those now proposed for diversified financial institutions would not have been adequate to allow a number of System institutions to survive without assistance from inside and outside the System.

The National Farmers Union agreed that single-industry lending in fixed geographical territories poses greater risk that those faced by diversified financial institutions, but voiced concern that higher capital standards would result in higher interest rates to borrowers, which would result in borrower flight from the System.

The FCCA did not agree that capital standards for Farm Credit institutions should be higher than for commercial banks. The FCCA argued that System institutions have less liquidity risk than commercial banks because of the System's status as a "sponsored" agency with access to the financial markets not available to commercial banks, the protection afforded debtholders by joint and several liability, the active secondary market in System debt issues, the easier access to liquidity through Federal Reserve purchase of debt issues, and the absence of demand deposits. In addition, the FCCA argued that commercial banks have more payment system risk, more country risk, more single borrower lending concentrations and a lower percentage of collateralized loans. The FCCA pointed out that other "sponsored" agencies, such as the Federal National Mortgage Association, are capitalized at lower rates than commercial banks because of their limited liquidity risks and that the Farm Credit System Insurance Corporation (created by section 302 of the 1987 Act) will provide greater protection for "insured" System liabilities than do Federal Deposit Insurance Corporation assets for insured commercial deposits. (After January 6, 1989, System debt issuances will be considered "insured" pursuant to section 302 of the 1987 Act.)

The FCCA also argued that the need to be competitive imposes a practical limit on the amount of permanent capital that can be accumulated, inasmuch as the cost of accumulating new capital would either be passed on to borrowers in the form of higher interest rates or would reduce capital that could otherwise be accumulated, or both. Finally, the FCCA asserted that the agricultural industry is extremely diversified with a broad variety of products, market factors and economic conditions. Several commenters stated that the mergers of the Federal land banks and the Federal intermediate credit banks would result in wider diversification in the resulting Farm Credit banks than has existed heretofore.

The FCCA suggested that a minimum permanent capital standard in the range of 3 to 4 percent be established for all System banks and associations. One Farm Credit district suggested that institutions be expected to achieve a 3 percent ratio by the end of the second year of the phase-in period and 4 percent by the fifth year. Another believed that the rate should be higher than the 4 percent core capital ratio proposed by the other regulators. An association suggested that 5½ percent would be an appropriate ratio.

Several commenters urged the FCA not to respond to the System's single-industry lending status and the adversity of the last 4 years with excessive capital requirements in the belief that the System could have weathered the recent adversity had its capital levels been high enough. To do so, it was argued, would be self-defeating to the System in its attempt to obtain new capital, in that institutions would be unable to pay a return to providers of capital and would be forced to charge uncompetitive rates to borrowers.

Several commenters stated that the FCA must take into account the fact that the allowance for losses is excluded from the statutory definition of permanent capital in the 1987 Act, while other regulators include the general portion of the allowance in the capital base. One commenter stated that Farm Credit System institutions should be allowed to do the same in order to be competitive with commercial banks. One commenter asserted that, if the risks in the loan portfolio are properly identified and the allowance for losses is adequate, System institutions carry proportionately fewer risk assets on their balance sheets than do more diversified institutions, since the remainder of the PCA's assets are invested in the FICB and in facilities and equipment used in the operation of the business.

One commenter opined that there should be local participation in establishing minimum permanent capital ratios. The commenter believed that local markets and the risk associated with specific commodities should be considered.

B. Single or Multiple Standards

In the ANPRM, the FCA invited comment on whether there should be a single standard for all System institutions or different standards that reflect the different levels of risk inherent in the operations of different types of institutions.

The FCCA favored a single standard in view of the potential complexity of the prospective System structure. The FCCA believed that the differences in risk could be addressed by risk-adjusting the assets and establishing the allowance for losses at an appropriate level.

Several other commenters supported the idea of using one standard for all institutions and accounting for the differences in the risk-weighting of the assets. One commenter suggested developing extensive and sophisticated asset risk-weighting categories that are reflective of the structural nature of the System as it evolves under the provisions of the 1987 Act and the collateral type and quality of the loan.

On the other hand, some commenters believed that the risk-weighting of assets would not adequately address the differences in risk evidenced by the historical loss records of the various institutions. One commenter noted that the recent stress in the agricultural sector impacted different institutions in the same district differently and that differential minimum permanent capital standards should be established after the differences have been quantified and studied.

A number of associations urged the FCA to consider the relationship between the associations and their district banks in setting capital standards. Several commenters noted that the association's ability to meet capitalization requirements depends on the actions of the district banks in setting interest rates, passing operating and other costs to the association, establishing the required investment in the bank and approving interest rates and operating budgets. These commenters urged the FCA to issue regulations that would insure that the associations have the same opportunity to meet capitalization standards as do district banks.

Another commenter suggested that the regulations impose restrictions on the transfer of capital between a Farm Credit bank and its associations, which would have the effect of requiring the bank to raise capital from outside sources rather than through raising the cost of funds to the associations. The commenter also urged that FCA merger regulations require the merged association to meet a specific capital adequacy standard upon chartering, to prevent non-viable associations from merging and utilizing capital which would be better utilized by viable associations, and that Farm Credit

banks be prohibited from distributing capital to merging associations that cannot meet the capital adequacy standards.

One commenter noted that the capital adequacy ratios should logically depend in large part upon what the FCA and System institutions envision the future functions of bank and associations to be. The commenter stated that the Congressional intent evident in the new legislation to decentralize more responsibility to associations is likely to result in System institutions that are not as closedly tied together as vertically integrated financial intermediaries as they have been in the past. The commenter, therefore, suggested that a flexible treatment of capital necessary to offset risks involved in asset liability management may be needed, as well as higher levels of capital to compensate for the loss of the protective supervision of Farm Credit banks. These changes, the commenter suggested, argue for differential capital levels. An association that if fully involved in asset liability management may need more stringent liquidity policies and procedures, and also more capital, than the association that simply discounts most of its assets with an intermediary wholesaler such as a Farm Credit bank.

One commenter urged the FCA to require disclosure of the current year's ratio of income to capital as well as the three previous year's ratios and projections for the next 3 years.

3. Risk-Based Capital Approach

In the ANPRM, the FCA stated its intention to consider the adoption of a risk-based approach similar to the proposed Interagency Guidelines published on March 15, 1988, by the Board of Governors of the Federal Reserve System (Federal Reserve), the Comptroller of the Currency (Comptroller) and the Federal Deposit Insurance Corporation (FDIC), (53 FR 8550) modified to reflect the relative risk factors inherent in the System institutions and the unique nature of permanent capital, as defined by the 1987 Act. The Interagency Guidelines are based on several years of study and are intended to promote the stability of the banking system and bring some degree of uniformity to capital standards so that there is competitive equity among institutions subject to the oversight of different regulators.

Under the Interagency Guidelines, assets would be assigned to categories ranging from 0 to 100 prcent according to the risk inherent in the particular type of asset. Assets assigned to the 0 percent category would be deemed to present no risk and would be excluded from the asset base altogether for the purpose of determining the institution's permanent capital ratio. Assets having the greatest risk would be assigned to the 100 percent category and the full face amount of the asset would be included in the asset base. Assets having intermediate degrees of inherent risk would be assigned to intermediate percentage risk categories and the face amount of the asset included in the asset base to the extent of the assigned percentage. The institution's permanent capital would then be divided by the institution's risk-adjusted asset base to arrive at the permanent capital ratio, which would be expressed as a percentage.

The Interagency Guidelines utilize two measures for commercial banks: (1) "tier one," core capital; and (2) "tier two," total capital, which includes core capital plus certain elements of supplementary capital. Core capital consists of stockholder's equity (common stock, surplus, and retained earnings—including disclosed capital reserves that represent an appropriation of retained earnings, net of Treasury stock and foreign currency translation adjustments); minority interest in common stockholder's equity accounts of unconsolidated subsidiaries; and, during the transition period, certain supplementary capital elements. Supplementary capital consists of the general allowance for losses on loans and leases; perpetual and long-term preferred stock (original maturity of at least 20 years); hybrid capital instruments—including perpetual debt, mandatory convertible securities and subordinated debt; and intermediate term preferred stock (original maturity of 7 years or more).

Many commenters supported the use of risk-adjusted capital standards similar to those used by other regulators. The FCCA noted that the substantive research, discussion, and agreement among Federal banking regulators make it an appropriate model for the System and that such an approach is consistent with the Congressional intent underlying section 301. The FCCA propoosed a risk-weighting of assets that is similar to that used in the Interagency Guidelines, with some modifications for assets unique to the System. For example, the FCCA proposed that investments in System institutions be risk-weighted at 0 percent and that loans to System be risk-weighted at 75 percent. The FCCA argued that such assets have less exposure to loss than loans and assets generally by reason of the unique protective devices available currently and prospectively to System institutions, such as joint and several liability, the availability of financial assistance through the Farm Credit System Assistance Board, and the protection to be provided through the Farm Credit System Insurance Corporation.

The FCCA favored a single measure of minimum capital over the two-tier approach of the Interagency Guideline. One Farm Credit district urged the FCA not to use a standard based on a ratio of unallocated surplus to assets. However, several commenters suggested that the regulatory standards developed by the FCA be treated as minimum guidelines and that the institution be held accountable for maintaining "appropriate levels" of capitala, which may be in excess of the regulatory minimum.

The American Bankers Association (ABA) urged the FCA to monitor the progress of the risk-based capital proposals of the other regulators to ensure that the regulations adopted by FCA at least meet the standards for commercial banks and included its comments on the risk-based capital proposals of the other regulators. The ABA's comments were generally critical of the proposals of the other regulators as a mandatory approach and urged the other regulators to allow the industry to develop risk-based capital guidelines.

D. Off-Balance-Sheet Items

In the ANPRM, the FCA stated its intention to require capital support for certain off-balance-sheet items, such as undisbursed commitments, letters of credit, and similar obligations that have some risk, by assigning them some weight for inclusion in the risk-adjusted asset base.

Comments received on weighting off-balance-sheet items were generally supportive. One commenter favored including undisbursed commitments only if they cannot be withdrawn. The FCCA stated that the weighting of off-balance-sheet items should be consistent with the Interagency Guidelines, but that only amount-specific commitments should be risk-weighted. For example, commitments under joint and several liability and loss sharing agreements or guarantees should be specifically excluded until such time as events occur that define the amount, as determined under GAAP, of the commitments.

E. Phase-In Period

In the ANPRM, the FCA stated its intention to propose interim target ratios which would be greater each year until the fifth year when the minimum permanent capital standard must be met

and to prohibit the payment of dividends and patronage until the fifth year standard is met.

The FCCA noted that during the first 5 years certain System banks and associations may need to rely upon retained earnings as the primary method of accumulating permanent capital to meet minimum capital adequacy standards and that a number of institutions may be unable to accumulate sufficient permanent capital within the next 5 years to meet the standard, even if they are well managed. The FCCA suggested that the FCA periodically conduct an institution-by-institution evaluation of progress in meeting the capital adequacy standard and establish regulatory oversight accordingly, giving considerable weight to the trend in accumulation of capital in addition to the absolute level attained. The FCCA recognized that regulatory enforcement action is both necessary and appropriate where the standard has not been met during the phase-in period and cannot be realistically projected in a sound business plan, but suggested that no regulatory action be taken against an institution that is effectively managed and has a total capital (including protected stock) of greater than 3 percent of weighted risk assets and a positive trend in the accumulation of permanent capital, even though the minimum permanent capital standard has not yet been met. This approach contemplates that the FCA and each institution would negotiate a trend line (not necessarily linear) with the objective of meeting the capital adequacy standard, even if doing so requires longer than a 5-year period.

The FCCA and a number of other commenters urged the FCA to reconsider its intention to prohibit the payment of patronage refunds or dividends until the final minimum standard is met. It was argued that such a prohibition will make it difficult for Farm Credit System institutions to develop sources of capital other than required borrower capital and, to the extent borrowers have anticipated such distributions as a reduction of their borrowing costs, may cause borrower flight from System institutions. The FCCA proposed an alternative by which a System institution is allowed to pay patronage refunds and dividends as long as the interim targets negotiated between the institution and the FCA are met. Several commenters agreed with this proposal. One commenter noted that the association might be able to get borrowers to convert protected stock to new, at-risk stock if the customers were assured of getting a return on their investment.

One Farm Credit district urged that phase-in regulations be specific enough to avoid subjective judgments by the FCA, with quantifiable measures and standards established through regulation, and that the institution's capital management not be hampered by an "all or none" philosophy for payment of dividends and patronage except in circumstances where there is a safety and soundness issue.

Several associations requested that the FCA, in establishing interim standards, take into account non-recurring events that temporarily distort the capital on an institution, such as the significant adverse impact of the Tax Reform Act of 1986 on production credit associations that had substantial loan loss reserves.

Commenters were generally supportive of requiring a plan during the phase-in period to achieve the minimum permanent capital standard. One commenter noted that such plans should address dividends and endorsed the components of the financial plan that was required in the capital adequacy regulations proposed by the FCA on July 23, 1986. One commenter believed that plans would be particularly helpful "during the interim period in which FCA prohibited from taking certain regulatory actions solely because of the failure of institutions to meet minimum adequacy standards." This commenter believed that the requirement should be lifted when the minimum capital requirement is met and as long as it is maintained.

F. Treatment of Equities

In the ANPRM, the FCA stated its intention to eliminate "double duty dollars" in the computation of the permanent capital ratio. "Double duty dollars" is a term that refers to the use of one dollar of real capital to support two credit risks.

The FCCA encouraged the continued use of "double duty dollars," stating that such continuation would be consistent with the requirements under section 301(a)(1)(b) of the 1987 Act and GAAP. The FCCA stated that the use of double duty capital encourages the generation of earnings at the discount lenders level, with benefits passed to the direct lenders through the cooperative patronage refund process, thus providing an equity base at the bank level to support its potential obligations under joint and several liability, as well as any secondary risk in its discount lending operation. The FCCA stated, however, that if there were to be an adjustment for double duty dollars to the extent that capital is counted only once, the capital should support those assets to which the primary risk applies and that the assets to which a secondary risk applies (i.e. the bank's loan to the association) should be risk-weighted at 0 percent.

Two districts and one association favored eliminating the double duty dollar. One district cited analogies to the treatment of unconsolidated subsidiaries and reciprocal holdings by the Interagency Group. Another district suggested that elimination of the double duty dollar might be accomplished by looking at a Farm Credit bank and its related associations as a combined entity for the purpose of determining the capital requirements, since it may be difficult to allocate the capital between the bank and association. An association suggested that the Farm Credit banks pay out any future earnings distribution in cash, noting the tax consequences of such a change, but also noting that such a method would eliminate the current complicated accounting practice. All of the commenters who commented on the issue favored concentrating the capital at the direct lender level where the primary risk resides.

In the ANPRM, the FCA also stated that equities that will be paid to borrowers in accordance with revolvement policies that entitle the shareholder to a specific payout at a specific time should not be considered as permanent capital.

The FCCA stated its belief that the only allocated equities that should be excluded from the determination of permanent capital are "allocated equities that were outstanding of the date of enactment of the 1987 Act and 'protected' under section 4.9A of the 1971 Act, as amended by the 1987 Act, and allocated equities (in a specific dollar amount) that will be retired on a date certain by reason of a specific action of the board of directors of the System institution authorizing such specific retirement." The FCCA stated that until such time as a board of directors establishes a date certain claim against allocated equities, such equities are at risk and should be considered permanent capital.

One Farm Credit district opined that the statute means for certain allocated equities that were revolved only by unilateral action of the System institution's board of directors to be considered at risk and therefore "permanent capital."

Several commenters, including the FCCA, urged the FCA to allow institutions to count certain elements that are not considered permanent

capital under the 1987 Act, such as the allowance for losses and protected equities, in computing their permanent capital ratios, at least during the phase-in period. One commenter suggested that protected equities might be discounted in some manner to reflect their "demand character."

C. Average Daily Balances

In the ANPRM, the FCA stated its expectation that the standards would be applied on the basis of daily average balances of the relevant accounts for each calendar quarter.

Most commenters believed that it would be difficult and costly for many institutions to close their books on a daily basis in order to comply, and that the cost would outweigh the benefits to be achieved. The FCCA noted that the seasonal variation and other loan volume trends of System institutions may cause a significant distortion in the amount of capital required, even on a quarterly basis, and that such distortions may cause overstatements in some cases and understatements in others of capital required against risk-adjusted assets. The FCCA proposed that the permanent capital ratios of System institutions be calculated as of the last day of each calendar quarter.

One district suggested that the standards be applied on the basis of a 12-month rolling average of month-end figures if 12-month daily averages are not considered feasible. One association indicated that daily averages would presently be a burdensome requirement, but that if given sufficient time, the capacity to obtain daily average balances could be acquired.

H. Public Hearing

The FCA invited comment on whether a public hearing would contribute to the thorough airing of issues related to capital adequacy. The response to this invitation was positive. One commenter suggested that hearings should be held in different parts of the country. Another suggested that a two-way discussion format be used for the hearing. Another requested that the full range of capital-adequacy-related issues be addressed.

I. Other Comments

The FCCA noted that section 6.9(e)(3)(D) [probably intended to be (B)] of the 1971 Act, added by section 201 of the 1987 Act, requires a treatment of the third quarter 1986 capital preservation assistance liabilities that is inconsistent with GAAP and requested a clarification that the term "GAAP" as used in section 301(a)(1)(B) means GAAP as adjusted for many exceptions in accordance with section 6.9(e)(3)(D) [probably B].

III. Response To Comments

A. Capital Adequacy

After careful consideration of the comments, the FCA proposes for comment a capital adequacy regulation that establishes a single risk-adjusted minimum permanent capital standard as a baseline for capital adequacy for all Farm Credit System institutions engaged in lending or leasing. The proposed regulation is modeled after the Interagency Guidelines proposed by the other Federal regulators. The FCA believes the Interagency Guidelines are an appropriate model for risk-weighting assets, even though Farm Credit System instititions are cooperatively organized, inasmuch as the risks associated with various types of assets are the same regardless of the organizational form of the institution that holds them (although rates should generally be higher for single-industry lenders).

The proposed minimum permanent capital standard is primarily designed to protect against credit or counterparty risk that is interent in the investment, servicing, lending, and leasing operations of System institutions, and which is not accounted for by the allowance for losses. Other types of risk, such as interest rate, liquidity, funding, and operational risks are not fully taken into account by the minimum standard. Such risks arising from management decisions made in the normal course of operations vary significantly among institutions and will require capital levels greater than those required by the proposed minimum permanent capital standard.

Establishment of a minimum permanent capital standard does not relieve the boards of directors and managements of System institutions from their obligation to evaluate and determine an adequate level of total capital. Overall capital adequacy should be set at a level to provide a base for required growth and a buffer to protect the institution's owners and creditors from future adversity. It should also provide for risks not taken into account by the minimum standard. An institution's overall capital requirements can only be determined after careful review of specific circumstances in each individual institution, such as: quality of policies, procedures, and internal controls; capability and experience of management, quantity and quality of earnings; adequacy of the allowance for credit losses; adequacy of liquid funds; needs of the institution's customer base; and any other risk-oriented activities requiring additional capital.

A final assessment of overall capital adequacy must take into account each of these conditions including, in particular, the level and severity of problem and classified assets. The minimum permanent capital ratio proposed by the FCA is but one element in the determination of overall capital adequacy, which determination may differ significantly from conclusions that might be drawn solely from the institution's risk-based capital ratio.

B. Single Standard for All Institutions

The proposed regulation adopts a single standard for all System institutions rather than multiple rates reflective of the different levels of risk inherent in the lending and leasing operations of the various Farm Credit System institutions. The FCA is well aware that the historical loss experience of different types of Farm Credit System institutions varies widely and that capital needs among institutions of the same type may differ greatly from institution to institution. However, the minimum standard is intended to provide for risks inherent in and common to lending institutions whether or not they are organized as cooperatives. In this regard, the risk-weighting of assets allows for the single rate to have a differential impact on an institution-by-institution basis, inasmuch as institutions with proportionately more high risk assets would be required to have more capital even though the rate is the same.

The FCA does not propose to weight assets on the basis of the condition or classification of the loan. These differences will be reflected in the allowance for losses, which, though not included in the computation of the permanent capital ratio, will affect the determination of the overall capital adequacy of an institution. Nor does the FCA propose to attempt to weight assets on the basis of type of commodity or geographic area or local markets. The difficulty of making such numerous, sophisticated judgment on these dynamic relative risk factors makes this an impracticable approach. Differences in risk exposure resulting from these factors, as well as other risks which may vary from institution to institution, such as interest rate, liquidity, and operational risks, must be determined and provided for by the board of directors in determining the overall capital requirements for each institution. The adoption of a single minimum standard for all System institutions would be consistent with Interagency

Guidelines on risk-adjusted capital proposed by the Federal Reserve, the Comptroller, and the FDIC (collectively, the Interagency Group).

The FCA proposes to make the Farm Credit Leasing Corporation (Leasing Corporation) subject to the proposed minimum permanent capital standards. The Leasing Corporation is exposed to risks similar to those encountered by Farm Credit banks and associations, inasmuch as leasing is a functional equivalent of lending. If lessees fail to perform in accordance with their lease terms, the Leasing Corporation may be left holding depreciated assets of little or no value. Because the risks are similar, the FCA proposes that the Leasing Corporation be subject to the same minimum permanent capital standards as System banks and associations.

The proposed regulation does not establish a minimum permanent capital standard for the Federal Farm Credit Funding Corporation, the FCCA, the Federal Agricultural Mortgage Corporation, or the Financial Assistance Corporation, all of which are Farm Credit System institutions. Capital standards for these institutions must be approached differently since they are not primarily engaged in lending and leasing operations. The FCA is considering what standards are appropriate for such institutions.

C. Asset Risk Weights

After a careful review of the asset risk-weights proposed by the Interagency Group and comments received on the ANPRM, the FCA has determined to propose for comment the asset risk-weight categories developed by the Interagency Group of 0, 10, 20, 50 and 100 percent. The proposed weight categories for risk assets are determined primarily on the basis of the type of instrument and the type of obligor. The only forms of collateral that are formally considered by the risk asset framework are obligations of the U.S. Government and its agencies and obligations of U.S. Government-sponsored agencies. The only guarantees that are recognized for weighting purposes are guarantees of the U.S Government, U.S. Government-sponsored agencies, and domestic State and local governments. However, other forms of collateral or guarantees would be taken into account in evaluating the adequacy of an institution's allowance for losses to properly value the credit portfolio. The allowance for losses is expressly excluded from the statutory definition of permanent capital in the 1987 Act. However, the adequacy of the allowance for losses must be addressed by the board, and management of each institution (and examined by the FCA for adequacy) in determining the overall capital requirements of the institution.

The FCA does not agree with the FCCA that System loans and investments should carry a lower risk-weight because of unique System protective devices, especially Federal financial assistance. The FCA believes that the System and the FCA have an obligation to make every effort to minimize the reliance on Federal assistance. Furthermore, the proposed regulation would establish a standard that the FCA believes, based on the information currently available, would be appropriate when financial assistance is terminated. Also, while "unique System protective devices" such as joint and several liability may provide risk protection to outside investors, for Farm Credit institutions, joint and several liability is an additional risk as well as a protective device. For the purpose of establishing internal capital standards, the proposed regulation considers Farm Credit System institutions as independent, stand-alone, but related entities. Accordingly, the FCA did not accept the FCCA's suggestion to weight investments in System institutions at 0 and loans to System institutions at 75. If the FCA were to accept the FCCA's suggestion to continue to double-count capital, the FCA would propose to risk-weight intra-System loans at 100 percent.

The FCA also did not accept the FCCA's suggestion that, if double counting of capital were to be eliminated, the direct loan from banks to associations should be risk-weighted at 0. Such a risk-weighting would undermine the effect of eliminating double counting of capital, since the objectionable feature of double-counted capital is that one dollar of real capital supports two units of risk. While the FCA recognizes that to some extent the risk of default on the direct loan and the risk of default by borrowers are the same risk, the FCA also believes that there is a secondary level of risk posed by the possibility that some associations may default for reasons other than or in addition to the direct passthrough of loan losses and that some cushion is needed to provide for the possibility that not all associations will be adequately capitalized. To provide for these risks, the FCA proposes to risk-weight direct loans to and investments in other Farm Credit System institutions at 20 percent.

The treatment of off-balance-sheet items in the proposed regulation is consistent with the Interagency Guidelines. Off-balance-sheet items would first be converted to a credit equivalent by the application of credit conversion factors that are also risk-based. For example, off-balance-sheet items that are direct credit substitutes have a credit conversion factor of 100 percent, because the institution is subject to essentially the same credit risk as if it had made a direct loan to the obligor or account party. Transaction-related contingencies, i.e., instruments backing the performance of nonfinancial or commercial contracts or undertakings and undisbursed commitments with original maturity exceeding 1 year, are subject to a 50-percent conversion factor. Short-term, self-liquidating, trade-related contingencies that arise from the movement of goods, such as commercial and documentary letters of credit collateralized by the underlying shipments, are subject to a credit conversion factor of 20 percent. Unused commitments with an original maturity of 1 year or less are deemed to involve little risk and are subject to a 0-percent credit conversion factor, which results in their requiring no capitalization at all. After applying the credit equivalent factor, the resulting amount is assigned to a risk-weight category or the same bases as the balance sheet assets-type of obligor or guarantor or type of collateral.

The treatment of goodwill is also consistent with the Interagency Guidelines. Goodwill acquired after the date of publication of this proposed regulation and all goodwill on the books of the institution after January 1, 1993, would be deducted from permanent capital (and the asset base) before computing the permanent capital ratio. This treatment is proposed because of the uncertainty of the future benefits of such an intangible asset, inasmuch as it does not involve a contractual right to receive a definite income stream for a specified or certain period. In the event an institution experiences financial difficulties, goodwill may not provide the degree of support provided by other assets because goodwill cannot be sold separately and because the entity whose acquisition gave rise to the goodwill may not be readily marketable. However, goodwill acquired before the date of publication of the proposed regulation would be "grandfathered." Until 1993, such goodwill would not be deducted from permanent capital, but would be risk-weighted in the asset base at 100 percent.

The proposed rule does not make any adjustments for intangible assets other than goodwill. Except for goodwill, there is no uniformity among the Interagency Group on the treatment of intangible assets. The Federal Reserve generally

evaluates intangible assets on a case-by-case basis and makes appropriate adjustments when the level or recorded value of these intangibles is inconsistent with the organization's overall financial condition. The FDIC and the Comptroller permit purchased mortgage servicing rights to be considered in the computation but allow other intangibles only on a case-by-case basis. The FCA invites comment on the appropriate treatment of intangible assets in the computation of the permanent capital ratio.

Differences from Interagency Guidelines: There are, however, several differences between the proposed regulation and the Interagency Group's proposed asset-risk weights:

(1) The Interagency Group weights cash items in process of collection in the 20-percent category; the proposed regulation assigns them to the 10-percent category. System institutions with these items have very low loss experience.

(2) The proposed regulation makes no distinction between the U.S. Government or U.S. Government-agency securities with less than 90 days to maturity and those with longer maturities, as the Interagency Group does. The FCA assigns all such securities to the 10-percent category rather than the 0-percent category, because short-term securities remain subject to some degree of interest rate and market risk.

D. Single Measure of Permanent Capital Adequacy

The proposed regulation does not incorporate a two-tier approach similar to the Interagency Group proposal. The Interagency Guidelines include in tier two, or total capital, elements that would not fall within the statutory definition of permanent capital, such as the general allowance for losses, hybrid debt-equity instruments and subordinated debt. The Interagency Guidelines also limit such supplementary capital that can be counted toward the capital ratio to 100 percent of the core capital. Although the proposed regulation does not adopt a similar two-tier approach, the FCA emphasizes that the minimum permanent capital standard is a minimum and does not fully take into account all of the risks a particular institution may need to provide for in determining an overall adequate level of capital. Also, while the proposed rule does not distinguish between various elements of permanent capital, the FCA encourages the accumulation of capital that is not subject to revolvement.

E. Treatment of Certain Equities

1. *Allocated equities:* The FCA regards all allocated equities that can be retired only in the discretion of the board (provided minimum standards are met) as permanent capital, as defined in the statute. However, the FCA wishes to encourage the accumulation of capital which both the institution and the holder understand at the outset is not subject to revolvement (except in the absolute discretion of the board), as the FCA understands this to be the intent of Congress in enacting the new capitalization provisions of the 1987 Act. Therefore, the proposed regulation would not count capital subject to revolvement as permanent capital unless (1) the bylaws state that such capital can be retired only at the discretion of the board and that there is no express or implied right granted to the borrower to have the capital retired at the end of the revolvement cycle or at any other time; and (2) the notice of allocation contains a similar statement.

The effect of this treatment would be to exclude from permanent capital all allocated equities presently outstanding, since they would not have been issued under such a bylaw, with such notice to the borrower. However, all of these equities are already excluded from permanent capital under section 4.9A of the 1971 Act, as amended by the 1987 Act.

2. *FLB passthrough equities:* The proposed rule would also exclude from the definition of permanent capital equities of the Federal land banks (FLBs) held by the Federal land bank associations (FLBAs) that were purchased in connection with loans supported by stock that is retireable upon repayment of the borrower's loan. The FCA believes that Congress intended such equities to be considered retireable upon repayment of the borrower's loan and therefore excluded from the statutory definition of "permanent capital." Such equities represent a direct, dollar-for-dollar passthrough of capital purchased by the borrower in the FLBA required by the 1971 Act prior to its amendment in 1987. Title I of the 1971 Act, prior to its replacement by the new Title I in the 1987 Act (which takes effect July 5, 1988), requires FLBA stock to be retired upon repayment of the loan. Section 1.16 of the 1971 Act, 12 U.S.C. 2033. It has long been the practice of FLBs to retire its FLBA-owned equities issued in connection with a particular loan when the loan is paid off, in order to permit the FLBA to fulfill its statutory obligation to retire its borrower-owned equities. Indeed, most FLBAs would be unable to retire their protected stock without stock impairment if the FLB did not retire the corresponding FLB stock, as most FLBAs have few earning assets and little earned net worth. If such FLB equities were to be treated as permanent capital, the statutory prohibition against the reduction of permanent capital through the payment of dividends or patronage or the retirement of stock if minimum permanent capital standards are not met (see new section 4.3A(d), added by section 301(b) of the 1987 Act) would effectively preclude the retirement of protected stock if the FLB did not meet the minimum permanent capital standards. This could lead to the anomalous result of FLBAs in relatively healthy districts seeking Federal Financial assistance, and facing insolvency if it were denied, while the FLB materially improves its capital position (since it no longer has the asset to support by retains the supporting capital).

The FCA believes the 1987 Act need not and should not be interpreted to yield such an unintended result. The 1987 Act excluded from the definition of permanent capital two categories of equities: (1) Equities protected under section 4.9A of the Act or otherwise not at risk; and (2) stock that must be retired upon repayment of the loan or otherwise at the option of the borrower. All borrower stock outstanding on the date of enactment and all stock issued as a condition for obtaining a loan until the earlier of the adoption of the new capitalization bylaws or 9 months from enactment is protected and included in Category 1. Under the new bylaws, no stock will be retireable at the option of the holder. Therefore, there are no FLBA equities that could fall into Category 2 that are not protected and, therefore, included in Category 1. The FCA has concluded that Congress must have considered FLB equities issued to FLBAs in connection with loans supported by protected stock to be retireable upon repayment of the loan or otherwise at the request of the holder and, therefore, excluded from the definition of "permanent capital." To treat such equities as permanent capital would render Category 2 a nullity and would produce a result inconsistent with the Federal financial assistance framework set forth in the 1987 Act.

3. *Prefeirred Stock:* Preferred stock is included within the statutory definition of permanent capital. However, the proposed rule would consider preferred stock issued to the Financial Assistance Corporation to be permanent capital only to the extent it is not used to offset

impairment of protected equities. To the extent it offsets such an impairment (so that all protected equities can be retired at par in accordance with the 1987 Act), it is not available to absorb risk. To treat such stock as permanent capital would undermine the clear intent of Congress to include in permanent capital only that capital which is available to absorb risk.

F. Double Duty Dollars

The proposed regulation would eliminate "double duty dollars" for the purpose of computing the permanent capital ratio. Double counting of capital in related institutions having a direct lending or discount relationship would be eliminated by excluding from permanent capital of the funding institution the direct lender's stock investment in the funding institution. Double counting of capital between institutions having a participation relationship would be eliminated in the following manner: Where an institution is required to invest in another institution in order to capitalize the participation interest of such other institution, the amount of such investment would be deducted from the permanent capital of the investing institution. For the purpose of eliminating double counting of capital only, the FLB and the FLBA would be considered to have a participation relationship. That is, the FLB would be considered to be the participating institution and the FLBA the investing institution. Double counting of capital between the Leasing Corporation and its owners would be eliminated by reducing the permanent capital of the owners of the Leasing Corporation by an amount equal to their investment in the Leasing Corporation.

The proposed regulation would also disregard any reciprocal or cross-holdings of stock or participation certificates in the computation of permanent capital in both institutions. These holdings are relatively rare, occurring primarily because of FICB financial assistance to PCAs in the form of capital investment. In some cases, such capital may not satisfy the definition of permanent capital because it can be retired at the option of the holder or because it was issued with a definite retirement date. Where these holdings do qualify as permanent capital, they would be deducted from both the permanent capital and the asset base of each institution prior to the computation of the permanent capital ratio and prior to the deductions required to eliminate "double duty dollars."

The proposed approach to "double duty dollars" is consistent with the Interagency Guidelines. While the concept of "double duty dollars" has no direct application in commercial banks, their proposed elimination would be analogous to the practice of the Interagency Group of eliminating related company transactions and reciprocal equity holdings between commercial banks prior to computing risk-adjusted capital ratios. The Interagency Guidelines eliminate related company transactions either through consolidation or by deducting investments in unconsolidated subsidiaries from the institution's capital before computing the minimum capital ratio. The rationale for such treatment of unconsolidated subsidiaries is that the assets of an unconsolidated subsidiary are not fully reflected in the parent's assets and "may be viewed as the equivalent of off-balance-sheet exposures since the operations of an unconsolidated subsidiary could expose the parent organization * * * to considerable risk." The Interagency Group views the capital invested in these entities as primarily supporting the risk inherent in the off-balance-sheet assets and not generally available to support risks or additional leverage elsewhere in the organization.

Reciprocal holdings are also deducted from the capital bases of both institutions under the Interagency Guidelines. In addition, the Interagency Group further considered whether to require the deduction of all holdings in other banks since these do not represent additional capital to the banking system as a whole and could increase the possibility that problems could be transmitted from one institution to another. While the Interagency Group decided not to restrict non-reciprocal holdings of capital, it was not addressing relationships between related entities. Based on these actions and comments, it is clear that the Interagency Group would not permit the use of the same capital twice in two related entities.

The FCA shares the concerns of the Interagency Group as they apply to System institutions and believes it is necessary to eliminate "double duty dollars" in order to obtain an accurate picture of the System's capital position and to assure that capital levels of all System institutions are adequate. Were "double duty dollars" not to be eliminated, the minimum standard would need to be established at higher levels to compensate for the double counting, since one dollar of capital supports both the primary and secondary lending risk. Also, loans to System institutions would then be risk-weighted at 100 percent.

The FCA believes that eliminating "double duty dollars" is not inconsistent with section 301 of the 1987 Act or GAAP. The proposed elimination would not reduce or not count permanent capital; it would merely avoid double counting the real capital that is there. Furthermore, eliminating the "double duty dollars" by treating the bank and the association as a combined entity, as suggested by one Farm Credit district, would be consistent with GAAP. Financial Accounting Standards Board Statement 12 states:

> There are circumstances, however, where combined financial statements (as distinguished from consolidated statements) of commonly controlled enterprises are likely to be more meaningful than their separate statements. For example, combined financial statements would be useful if one individual owns a controlling interest in several enterprises that are related in their operations. Combined statements also would be used to present the financial position and the results of operations of a group of unconsolidated subsidiaries. They also might be used to combine the financial statements of enterprises under common management. If combined statements are prepared for a group of related enterprises, such as a group of unconsolidated subsidiaries or a group of commonly controlled enterprises, intercompany transactions and profits or losses shall be eliminated, and if there are problems in connection with such matters as minority interests, foreign operations, different fiscal periods or income taxes, they shall be treated in the same manner as in consolidated statements.

While the ownership structure is inverted in the Farm Credit System, the same principles apply. Combined statements of the bank and the association are required in reports to shareholders by 12 CFR Part 620 and are used in Reports to Investors, both of which are required to be prepared in accordance with GAAP. Furthermore, the FCA believes that the primary purpose of the Congressional directive to base the minimum permanent capital standards on financial statements prepared in accordance with GAAP was to assure that capital standards would not be based on the regulatory accounting procedures permitted under section 5.9 of the 1971 Act, 12 U.S.C. 2254.

While using a combined balance sheet as a basis for computing permanent capital ratios would eliminate "double duty dollars," the FCA does not want to obscure the fact that the institutions are independent entities. Therefore, the proposed regulation is drafted to

accomplish the elimination directly and to count the capital at the direct lender level, where the primary risk resides.

The FCA considered other methods of eliminating (for the purpose of computing permanent capital ratios) the double counting of capital and/or assets between institutions having a lending/investing relationship. Among the methods considered were the following:

One method considered would have eliminated double-counted assets and capital and apportioned them 75 percent to the direct lender and 25 percent to the funding institution (the "75/25" approach). The assets of the funding institution would be reduced by an amount equal to 75 percent of the loan (or discount) to the direct lender and the assets of the direct lender would be reduced by 25 percent of its indebtedness to the funding institution. Similarly, when counting capital, the funding institution would reduce its permanent capital by an amount equal to 75 percent of the direct lender's investment in the funding institution and the direct lender would reduce its permanent capital and assets by an amount equal to 25 percent of its investment in the funding institution. Adjustments having a similar effect would be made for the BC/CBC system and for the Leasing Corporation.

A second method considered would have eliminated double-counted capital and assets by excluding them from consideration by the investing institution (the "owned funds" approach). The investing institution, when computing its permanent capital ratio, would have been required to exclude from its assets and its capital an amount equal to its investment in its funding institution. The funding institution would be permitted to include all its otherwise eligible capital.

The FCA invites comments on these alternatives to the proposed approach, or others, that would eliminate double-counted dollars between institutions having a lending/investing relationship.

G. The Minimum Permanent Capital Standard

The FCA proposes to require that System institutions maintain at all times permanent capital that is adequate for their institution, but in no case less than 7 percent of their risk-adjusted assets. After reviewing the comments submitted, the FCA continues to believe that concentrated, single-industry lending within limited geographic areas is inherently riskier than is the more diversified multi-industry lending that is typical of many commercial banks. The FCA rejects the FCCA's argument that System institutions have less risk from single borrower lending concentrations than commercial banks; few commercial banks are as dependent on the well-being of a few borrowers as are many Farm Credit System institutions.

Historically, the Farm Credit System has maintained high levels of capital relative to commercial lending institutions. For instance, until 1971, the BCs were prohibited from exceeding debt-to-capital ratios of 13 to 1 (7.1 percent). In 1982, before the magnitude of the current crisis was fully understood, the Farm Credit System developed monitoring standards in support of capital preservation and other loss-sharing agreements, which set capital as a percent of total assets for Farm Credit System institutions at levels of about 1.5 percent for FICBs, 4 percent for FLBs, 7 percent for PCAs, and 7 percent for BCs. After risk-adjusting total assets and eliminating "double duty dollars" in these institutions, the proposed standards are not substantially different.

The Interagency Group has proposed a 1992 minimum capital standard with two components—a core capital (essentially, common stockholders' equity) standard of 4 percent, and a "second-tier" standard, which considers other forms of capital (including the allowance for losses) in addition to core capital, of 8 percent. These standards are intended to apply to all financial institutions in the United States and, basically, represent the minimum standards agreed to by 10 Western industrialized countries. (The United Kingdom, for comparison, has proposed minimum standards for core capital of 8 percent for its institutions.)

The FCA estimated the levels of permanent capital that would have been required by various System institutions in order to have survived the stress of the last 5 years without Federal assistance and still be able to generate positive earnings in 1992. The studies showed that the combined FLB/FLBA system would have needed permanent capital of about 10 percent of weighted assets—with some districts needing up to 16 percent. The FICB/PCA and BC systems were estimated to need somewhat less, while many individual PCAs appear to need substantially more.

The FCA also computed the yearend 1987 permanent capital ratios for several districts with the best operating results. After combining the FLB and FICB in each district, the resulting total capital ratios ranged from 9.2 percent to 15.5 percent, averaging about 12.5 percent. After double-counted capital was eliminated, the combined banks' total capital ratios ranged from 6.3 percent to 9.6 percent, averaging about 8 percent. The FCA concluded that very few, if any, institutions desiring to generate consistent net positive earnings could operate with much less than 8 percent risk-adjusted capital. While these calculations included stock that is now protected under the 1987 Act and is not permanent, eventually permanent capital will comprise all of the institution's capital, as protected stock is replaced by new at-risk stock.

After considering the proposals of the other financial regulators and the experience of Farm Credit System institutions over the last 5 years, the FCA has concluded that 7 percent is an appropriate minimum level for all Farm Credit lending and leasing institutions. The elimination of "double duty dollars" and the risk adjusting of the assets will, of course, cause the rate to have a differential impact on the various types of institutions.

The FCA believes that even with levels of permanent capital at 7 percent of weighted assets, many institutions may be undercapitalized if there are substantial weaknesses, in their management, the terms and conditions of their existing loans, or in the general economic condition of their service area. Without significant changes in their operating practices, these institutions may not be viable independent entities and may need to consider merger with stronger entities in order to continue to service their territory and minimize the need for financial assistance.

H. Phase-In

While many institutions do not presently meet the proposed standard, the FCA believes that standards should be set, on a normative basis, at a level appropriate to provide for the risks, with reasonable provision for a gradual phase-in.

The proposed regulation would provide, for institutions that are unable to meet the standard in the first year, for the standard to be phased in over a 5-year period, as required by the 1987 Act. This would be achieved through a series of annual interim minimum permanent capital standards (interim standards) that are determined by reference to the existing permanent capital ratio in the institution on December 31, 1987, and to the 1993 standard of 7 percent. That is, the difference between the institution's ratio on December 31, 1987, and 7 percent would be divided by five to determine the annual increments by which the interim permanent capital standard for that institution would increase each year. This approach provides for a measure of customization

of the interim standards to the circumstances of a particular institution. The FCA invites comment on alternative methods for determining appropriate increments for the annual interim minimum capital standards.

The FCA rejects the FCCA suggestion to negotiate trend lines with each institution as a substitute for interim standards, but anticipates that such a process may in fact occur in the process of determining what regulatory enforcement actions are appropriate. The FCA believes that the institution's good faith efforts to meet the standard and reasonable progress in doing so should be factors in determining whether regulatory enforcement action is appropriate for an institution that does not meet the standard. The FCA will not be inclined to bring enforcement actions against institutions that are making a good faith effort to meet minimum standards and are making reasonable progress in doing so. What constitutes reasonable progress and good faith efforts must be determined on an institution-by-institution basis during the course of the examination process and may in fact amount to a negotiated trend line.

On the other hand, meeting the minimum capital standard does not necessarily ensure that an institution has adequate overall capital for safe and sound operation. Where safety and soundness considerations require, enforcement actions may be appropriate even though the minimum permanent capital standard is met.

The FCA wishes to clarify the statutory constraints under which the FCA may take enforcement actions during the phase-in period, since some comments reflect an apparent misunderstanding of these provisions. The statute does not prohibit enforcement actions against institutions based solely on capital adequacy during the phase-in period. It merely requires the concurrence of the Farm Credit System Assistance Board for such enforcement actions against institutions authorized to issue preferred stock to the Assistance Board (i.e., institutions authorized to receive Federal financial assistance).

I. Distribution of Earnings

The comments received on the distribution of earnings during the phase-in period were also carefully considered. A majority of the commenters urged the FCA to reconsider its announced intention to prohibit the payment of dividends and patronage refunds until the fifth year minimum permanent capital standard is met.

The FCA is sympathetic with the need to offer some incentive to providers of capital in order to attract new permanent capital. On the other hand, the FCA feels an obligations to discourage the dissipation of capital if the effect would be to increase the need for Federal financial assistance. The FCA believes that the System has a similar obligation to minimize the need for Federal financial assistance. However, the need to accumulate sufficient permanent capital in Farm Credit System institutions at the end of the 5-year Federal financial assistance period and the need to develop sources of permanent capital (other than borrower stock required to be purchased as a condition for the loan) have caused the FCA to reconsider its initial position on the distribution of earnings during the phase-in period. Therefore, the proposed regulation would permit the payment of dividends and patronage in any year in which the interim standard is met, provided such distribution is consistent with the capital adequacy plan developed by the institution. However, even if the interim standard is met, no distributions should be made (except those permitted under section 4.3A(d)(2) of the 1971 Act, as amended by section 301(b) of the 1987 Act) unless it appears reasonably probable that the institution will be able to meet its interim standard for the next year after the distribution is made. The FCA expects institutions to balance carefully the need to attract new capital and prevent borrower flight against the impact of the distribution upon the institution's capital levels, to assure that the net effect of the action on the institution's capital levels will be positive.

J. Average Daily Balance

The proposed regulation adopts the suggestion of one Farm Credit district that the standard be applied on the basis of a 12-month rolling average of month-end figures during the phase-in period, but applies the standard on an average daily balance after December 31, 1989. This would give institutions a reasonable time to develop the capacity to close their books on a daily basis, as do commercial banks.

K. Clarifications

The FCCA requested two clarifications. First, the FCCA requested that the FCA clarify that the reference to "surplus (less the allowance for losses)" in the definition of permanent capital in the 1987 Act is intended to exclude the allowance for losses from the definition of permanent capital, not require it to be subtracted from the surplus. The confusion arises because, under GAAP, the allowance for losses is not included in the surplus account, as the statutory language would suggest, but is shown as an offset to asset accounts. The FCA believes that the phrase "surplus (less the allowance for losses) should be read as "surplus (exclusive of the allowance for losses)."

Second, the FCCA requested that the section 301(a)(1)(B) requirement to establish minimum permanent standards based on GAAP be interpreted to mean "GAAP as adjusted by any exception in accordance with section 6.9(e)(3)(D)" [probably intended by FCCA to be B], which requires a treatment of third quarter 1986 capital preservation assistance liabilities that is inconsistent with GAAP. Since there is no provision in the 1987 Act indicating that section 6.9(e)(3)(B) overrides section 301, a strict interpretation of section 301(a)(1)(B) would preclude the clarification sought by the FCCA. However, as noted above, the FCA believes that section 301(a)(1)(B) was primarily intended to assure that minimum permanent capital standards would not be based on regulatory accounting procedures established by the 1986 Act, Pub. L. 99-509, codified at 12 U.S.C. 2159, and in the absence of an express override provision in section 301, will not interpret section 301(a)(1)(B) so strictly as to yield unintended results.

L. Public Hearing

The FCA invited comment on whether a public hearing would be a useful means of assuring that the issues related to capital adequacy are thoroughly aired. The commenters who responded to this invitation agreed that it would. Accordingly, it is expected that a public hearing will be scheduled for June 9, 1988, in the Washington, DC, area.

IV. Proposed Regulation.

The FCA proposes to amend Subpart H of 12 CFR Part 615 by removing § 615.5210 and adding it to Subpart J of Part 618 as § 618.8440, and removing the remaining sections (615.5200 and 615.5215) in Subpart H and all sections of Subpart I in their entirety. The deleted sections of Subpart H, except § 615.5210, are inconsistent with the proposed regulation. The deleted sections of Subpart I set forth debt-to-equity ratios required of Farm Credit System institutions under prior law. The FCA invites comment on whether some debt-to-equity standard should be required during the phase-in period or until experience with the risk-adjusted capital approach demonstrates that it

will provide an adequate control on leverage.

The following new sections would be added to Subpart H:

A. Proposed § 615.5200 would require a Farm Credit System institution to determine the level of capital needed to assure its continued financial viability and to provide for growth necessary to meet the needs of its borrowers. Each institution would be required to establish a formal, written capital adequacy plan that, if followed, would enable the institution to achieve its operating goals as well as the minimum permanent capital standard. The plan would be required to address projected earnings distributions and stock retirements and to take into account the capability of management, the quality and quantity of earnings, the quality of its assets and the adequacy of the allowance for losses, the sufficiency of liquid funds, the needs of an institution's customer base, and any other risk-oriented activities, such as funding and interest rate risks, contingent and off-balance-sheet liabilities, and other conditions warranting additional capital.

B. Proposed § 615.5201 sets forth definitions of terms used in the subpart. "Institution" is defined to include all Farm Credit banks and associations and the Farm Credit Leasing Corporation. "Permanent capital" is defined to include all capital except stock and other equities that may be retired on the repayment of the holder's loan or otherwise at the option of the holder or are protected under section 4.9A of the 1971 Act, as amended, or are otherwise not at risk. Excluded under this definition of permanent capital would be: (1) Preferred stock issued to the Financial Assistance Corporation to the extent it offsets an impairment of protected equities; (2) FLB equities required to be purchased by the FLBA in connection with a loan supported by stock protected under section 4.9A of the Act; and (3) capital subject to revolvement unless the institution's bylaws clearly provide that such capital can be retired at the sole discretion of the board and that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time, and the notice of allocation includes a similar statement. The section also defines other terms used in the computation of permanent capital ratios.

C. Proposed § 615.5205 requires System institutions, beginning in 1993, to maintain at all times permanent capital at a level of at least 7 percent of its risk-adjusted assets. The section also sets forth the method for determining the annual interim minimum permanent capital standard for each institution. The difference between the institution's permanent capital ratio on December 31, 1987, and the 7 percent standard applicable in 1993 is divided by 5 to arrive at the annual increment by which the beginning capital ratio must increase each year in order to reach 7 percent by 1993. The interim minimum permanent capital standard for 1989 is determined by adding the increment to the beginning permanent capital ratio. The interim minimum permanent capital standard for each year between 1989 and 1993 is determined by adding the annual increment to the prior year's interim standard.

D. Proposed § 615.5210 sets forth the proposed method for computing an institution's permanent capital ratio. The institution's permanent capital, (adjusted to eliminate reciprocal equity holdings between institutions, double counting of capital, and goodwill) is divided by its assets, (also adjusted to eliminate reciprocal holdings between institutions, and goodwill).

Adjustments to permanent capital. Before the ratio is computed, certain adjustments to the permanent capital and the asset base would be required. First, reciprocal holdings of equities between institutions would be eliminated to the extent of the offset in both institutions. If the investments are equal in amount, the elimination would be accomplished in each institution by deducting from permanent capital issued to another Farm Credit System institution an amount equal to any investment in such institution and reducing assets by an equal amount. If the investments are not equal in amount, the permanent capital and assets of each institution would be reduced by an amount equal to the smaller investment.

Second, double counting of capital between institutions having a direct loan or discount lending relationship would be eliminated by reducing the permanent capital of the funding institution by an amount equal to the direct lender's investment remaining after the elimination or reciprocal holdings, if any.

Third, double counting of capital between institutions having a participation relationship would be eliminated by deducting the investment required to capitalize the participation from the permanent capital of the investing institution.

Fourth, double counting of capital would be eliminated between the Leasing Corporation and its owners by reducing the permanent capital of the owner institutions by an amount equal to their investment in the Leasing Corporation.

Fifth, the section would require institutions to reduce their permanent capital by the amount of any goodwill reflected on the balance sheet, but would "grandfather" until 1993 goodwill acquired before the date of publication of the proposed regulation. That is, goodwill acquired before the date of publication of the proposed regulation would be considered as an asset weighted in the 100 percent category until 1933, after which it would be deducted from permanent capital. Goodwill acquired after the date of publication of the proposed regulation would be deducted from permanent capital (and assets).

Risk-weight categories. Risk-weight categories would be defined primarily on the basis of the type of asset and type of obligor or guarantor. Cash and claims on Federal Reserve banks would be assigned to Category 1, which is risk-weighted at 0 percent. Securities of the United States Government and explicitly guaranteed United States agency securities, cash items in process of collection, portions of loans and other assets collateralized by securities of the United States Government or its agencies, and securities and other claims guaranteed by the United States Government or its agencies (including portions of claims guaranteed) are assigned to Category 2, which is risk-weighted at 10 percent. Loans and other assets collateralized by United States Government-sponsored agency securities, investments in foreign banks with an original maturity of 1 year or less, all investments in domestic banks, investments in general obligations of State and local government, claims on official mutinational lending institutions, or regional development institutions in which the United States Government is a shareholder or contributor are assigned to Category 3, which is risk-weighted at 20 percent. All other investment securities with maturities under 1 year are assigned to Category 4, which is risk-weighted at 50 percent. All other claims on private obligors, claims on foreign banks with an original maturity exceeding 1 year, loans and investments in Farm Credit institutions, and all other assets, including but not limited to fixed assets and receivables, are assigned to Category 5, which is risk-weighted at 100 percent. "Goodwill" grandfathered under § 615.5201 is risk-weighted in the 100-percent category until 1993, at which time it would be deducted from permanent capital and risk-weighted in the 0-percent category.

Off-balance-sheet items. Off-balance-sheet items would be risk-weighted in a two-step process. First, a credit equivalent would be obtained by multiplying the face amount of the item by the appropriate credit conversion factor set forth in the regulation. The resulting amount would then be risk-weighted in the same manner as balance sheet assets.

Proposed credit conversion factors are set forth in the regulation. A credit conversion factor of 0 percent would be applied to unused commitments with an original maturity of 1 year or less. A credit conversion factor of 20 percent would be applied to commercial letters of credit. A credit conversion factor of 50 percent would be applied to transaction-related contingencies (i.e. bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction), commitments with an original maturity exceeding 1 year, revolving underwriting facilities, note issuance facilities and other similar arrangements. A credit coversion factor of 100 percent would be applied to direct credit substitutes (general guarantees of indebtedness, including standby letters of credit serving as financial guarantees for loans and securities); acquisitions of risk participations in bankers acceptance, and participations in direct credit substitutes; sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet; and forward agreements to purchase assets.

Interest rate contracts and foreign exchange contracts would require special treatment to arrive at a credit equivalent amount. The institution would add the current exposure, i.e. total replacement cost (obtained by marking to market) of all its contracts with a positive value and an estimate of the potential future credit exposure, determined by multiplying the notional principal amount by one of the following credit coversion factors, as appropriate:

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less that 1 year	0	1.0
One year and over	0.5	5.0

No potential credit exposure would be calculated for single currency floating/floating interest rate swaps. The credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value.

List of Subjects in 12 CFR Parts 615 and 618

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Archives and records, Insurance, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, Parts 615 and 618 of Chapter VI, Title 12, of the Code of Federal Regulations are proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 is revised to read as follows:

Authority: 12 U.S.C. 2154, 2243, 2252, Section 301(a) of Pub. L. 100–233.

2. Subpart H is revised to read as follows:

Subpart H—Capital Adequacy

Sec.
615.5200 General.
615.5201 Definitions.
615.5205 Minimum permanent capital standards.
615.5210 Computation of the permanent capital ratio.
615.5215 Distribution of earnings.

Subpart H—Capital Adequacy

§ 615.5200 General.

(a) The Board of Directors of each Farm Credit System institution shall determine the amount of capital needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum permanent capital standard prescribed in § 615.5205 is not meant to be adopted as the optimum capital level in the institution's capital adequacy plan. Rather, the standard is intended to serve as a minimum level of permanent capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) The Board of Directors shall establish and maintain a formal written capital adequacy plan as a part of the financial plan required by § 618.8440. The plan shall include the capital targets that are necessary to achieve the institution's capital adequacy goals as well as the minimum permanent capital standards. The plan shall address any projected dividends, patronage distribution, equity retirements, or other action that may decrease the institution's permanent capital. In addition to factors that must be considered in meeting the minimum standards, the Board of Directors shall also consider at least the following factors in developing the capital adequacy plan:

(1) Capability of management;

(2) Quality of operating policies, procedures, and internal controls;

(3) Quality and quantity of earnings;

(4) Asset quality and the adequacy of the allowance for losses to absorb potential loss within the loan and lease portfolios;

(5) Sufficiency of liquid funds;

(6) Needs of an institution's customer base; and

(7) Any other risk-oriented activities, such as funding and interest rate risks, contingent and off-balance-sheet liabilities or other conditions warranting additional capital.

§ 615.5201 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) "Commitment" means any arrangement that legally obligates an institution to purchase loans or securities, to participate in loans or leases, to extend credit in the form of loans or leases, to pay the obligation of another, to provide overdraft, revolving credit or underwriting facilities, or to participate in similar transactions. Lending or leasing arrangements that are unconditionally cancellable at any time at the option of the institution shall not be considered to be commitments, provided the institution makes a separate credit decision based upon the borrower's current financial conditions before each advance of funds or other credit under the arrangement.

(b) "Credit conversion factor" means that number by which an off-balance-sheet item shall be multiplied to obtain a credit equivalent before placing the item in a risk-weight category.

(c) "Direct lender institution" means an institution that extends credit in the form of loans or leases to eligible borrowers in its own right and carries such loan or lease assets on its books.

(d) "Government agency" means an agency of the United States Government whose obligations are explicitly guaranteed by the United States Government or their successors.

(e) "Government-sponsored agency" means agencies or instrumentalities charted by the United States Congress to serve a public purpose whose debt obligations are not explicitly guaranteed by the United States Government.

(f) "Institution" means a Farm Credit bank, Federal land bank association, production credit association, Farm Credit association, Farm Credit Leasing Corporation, bank for cooperatives, and

Central Bank for Cooperatives, and their successors.

(g) "Permanent capital" means all capital except stock and other equities that may be retired on the repayment of the holder's loan or otherwise at the option of the holder, or is protected under section 4.9A of the Act, or is otherwise not at risk. For the purpose of computing the permanent capital ratio, permanent capital shall not include:

(1) Preferred stock issued to the Financial Assistance Corporation to the extent it is used to offset an impairment of equities protected under section 40.9A or the Act;

(2) FLB equities required to be purchased by FLBAs in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(3) Capital subject to revolvement, unless:

(A) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any time; and

(B) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvement cycle or at any other time is thereby granted.

(h) "Risk-adjusted asset base" means the total dollar amount of the institution's assets adjusted in accordance with § 615.5210(d) weighted on the basis of risk in accordance with § 615.5210(e).

(i) "Stock" means stock and participation certificates.

§ 615.5205 Minimum permanent capital standards.

(a) Beginning on January 1, 1993, each Farm Credit System institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted assets.

(b)(1) During each year beginning on January 1, 1988, through January 1, 1993, each institution that does not meet the minimum permanent capital standard established in paragraph (a) of this section shall maintain a level of permanent capital at all times during such year at a level that is not less than the interim minimum capital standard for such year:

(2) The annual interim minimum permanent capital standards shall be determined for each institution in the following manner: A beginning permanent capital ratio shall be determined as of December 31, 1987. The difference between the institution's beginning ratio expressed as a percentage and 7 percent shall be divided by five. The resulting number shall be the annual increment to be used to determine the interim minimum permanent capital standard for each of the years between 1988 and 1993. The interim minimum permanent capital standard for each of the following years shall be equal to:

For 1988—the beginning capital ratio;
1989—the beginning capital ratio plus the increment;
1990—the beginning capital ratio plus (2 times the increment);
1991—the beginning capital ratio plus (3 times the increment);
1992—the beginning capital ratio plus (4 times the increment);
1993—7 percent.

§ 615.5210 Computation of the permanent capital ratio.

(a) The institution's permanent capital ratio shall be determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles.

(b) Through December 31, 1989, the institution's assets may be computed using the average of the most recent 12 months' balances. Thereafter, the institution's asset base shall be computed using currently daily balances.

(c) The institution's permanent capital ratio shall be calculated by dividing the institution's permanent capital, adjusted in accordance with paragraph (d) of this section (the numerator), by the risk-adjusted asset base (the denominator), to derive a ratio expressed as a percentage.

(d) For the sole purpose of computing the institution's permanent capital ratio, the following adjustments shall be made prior to assigning assets to risk-weight categories and computing the ratio:

(1) Where two Farm Credit System institutions have stock investments in each other, such reciprocal holdings shall be eliminated to the extent of the offset. If the investments are equal in amount, each institution shall deduct from its assets and its permanent capital an amount equal to the investment. If the investment are not equal in amount, each institution shall deduct from its permanent capital and its assets an amount equal to the smaller investment.

(2) Where an institution (except the Leasing Corporation or the Central Bank for Cooperatives) is owned by another Farm Credit System institution that is a direct lender, the double counting of capital shall be eliminated by deducting from the permanent capital of the owned institution any investment of the direct lender not eliminated pursuant to paragraph (d)(1) of this section.

(3) Where an institution invests in another institution to capitalize a participation interest purchased by such other institution, the investing institution shall deduct from its permanent capital an amount equal to its investment in the participating institution. For the purpose of computing the minimum permanent capital ratio, the FLB shall be considered a participating institution and the FLBA shall be considered an investing institution.

(4) The double counting of capital between the Leasing Corporation and its owner institutions shall be eliminated by reducing the permanent capital of the owner institutions by 100 percent of their investment in the Leasing Corporation.

(5) Each institution shall deduct from its permanent capital an amount equal to any goodwill acquired after May 12, 1988. Beginning on January 1, 1993, each institution shall deduct from its permanent capital all goodwill, whenever acquired.

(e) The risk-adjusted assets base (denominator) shall be determined in the following manner:

(1) Each asset on the institution's balance sheet and each off-balance-sheet item, adjusted by the appropriate credit conversion factor in paragraph (e)(3) of this section, shall be assigned to one of five risk categories in accordance with this section. The aggregate dollar value of the assets in each category shall be multiplied by the percentage weight assigned to that category. The sum of the weighted dollar values from each of the five risk categories shall comprise the denominator for computation of the permanent capital ratio.

(2) Balance sheet assets shall be assigned to the percentage risk categories as follows:

(i) *Category 1: 0 Percent.* (A) Cash on hand and demand balances held in domestic and foreign banks.

(B) Claims on Federal Reserve Banks.

(C) Goodwill acquired after May 12, 1988.

(D) Beginning 1993, all goodwill, whenever acquired.

(ii) *Category 2: 10 percent.* (A) All securities issued by the U.S. Government and Government agencies.

(B) Cash items in the process of collection.

(C) Portions of loans and other assets collateralized by securities of the U.S Government or Government agencies.

(D) Securities and other claims guaranteed by the U.S. Government or

Government agencies (including portions of claims guaranteed).

(iii) *Category 3: 20 percent.* (A) Loans and other assets collateralized by U.S. Government-sponsored agency securities.

(B) Claims on foreign banks with an original maturity of 1 year or less.

(C) Claims on domestic banks (exclusive of demand balances).

(D) Investments in State and local government obligations backed by the "full faith and credit of State or local government."

(E) Claims on official multinational lending institutions or regional development institutions in which the U.S. Government is a shareholder or contributor.

(F) Obligations of and investments in Farm Credit institutions.

(iv) *Category 4: 50 percent.* (A) All other investment securities with maturities under 1 year.

(v) *Category 5: 100 percent.* (A) All other claims on private obligors.

(B) Claims on foreign banks with original maturity greater than 1 year.

(C) All other assets not specified above, including but not limited to, leases, fixed assets, and receivables.

(D) Until 1993, goodwill acquired before May 12, 1988.

(3) Off-Balance-Sheet Items.

(i) The dollar amount of off-balance-sheet items that shall be assigned to a risk-weight category for inclusion in the denominator shall be determined by multiplying the face amount of the item by the appropriate credit conversion factor set forth in paragraph (b) of this section. The resulting amount shall be then assigned to the appropriate risk-weight category described in paragraph (e)(2) of this section on the basis of the type of obligor.

(ii) Credit conversion factors shall be applied to off-balance-sheet items as follows:

(A) *0 Percent.* (*1*) Unused commitments with an original maturity of 1 year or less.

(B) *20 Percent.* (*1*) Short-term, self-liquidating, trade-related contingencies, including but not limited to, commercial letters of credit.

(c) *50 Percent.* (*1*) Transaction-related contingencies (e.g. bid bonds, performance bonds, warranties, and standby letters of credit related to a particular transaction).

(*2*) Unused commitments with an original maturity exceeding 1 year, including underwriting commitments and commercial credit lines.

(*3*) revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements.

(D) *100 Percent.* (*1*) Direct credit substitutes (general guarantees of indebtedness, including standby letters of credit serving as financial guarantees for loans and securities).

(*2*) Acquisitions of risk participations in bankers acceptances and participations in direct credit substitutes (e.g. standby letters of credit).

(*3*) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.

(*4*) Forward agreements (i.e., contractual obligations) to purchase assests, including financing facilities with certain drawdown.

(iii) Credit equivalents of interest rate contracts and foreign exchange contracts (except single currency floating/floating interest rate swaps) shall be determined by adding the replacement cost (mark-to-market value, if positive) to the potential future credit exposure, determined by multiplying the national principal amount by the following credit conversion factors as appropriate.

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than 1-year	0	1.0
1 Year and over	0.5	5.0

(iv) Creidt equivalents of single currency floating/floating interest rate swaps shall be determined by their replacement cost (mark-to-market).

§ 615.5215 Distribution of earnings.

The boards of directors of System institutions may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities if, after or due to the action, the permanent capital of the insitution would fail to meet the minimum permanent capital adequacy standard established under regulation § 615.5210 for that period. This limitation shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital. Any System institution subject to Federal income tax may pay patronage refunds partially in cash if the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

Subpart I—[Removed and Reserved]

3. Subpart I, §§ 615.5220 to 615.5240, is removed and reserved.

PART 618—GENERAL PROVISIONS

4. The authority citation for Part 618 continues to read as follows:

Authority: 12 U.S.C. 2183, 2243, 2244, 2252.

Subpart J—Internal Controls

5. Subpart J is amended by adding a new § 618.8440 to read as follows:

§ 618.8440 Annual budgets and projections.

(a) The board of directors of each Farm Credit System insitution shall adopt and approve an operational and strategic business plan, completed not later than 30 days after the commncement of each calendar year.

(b) The plan, at a minimum, shall address the operations of the institution for a minimum of 3 years and shall cover a minimum of the following areas:

(1) A mission statement, which describes how the institution intends to meet the long-term needs of its customers, creditors, stockholders, and employees.

(2) A review of the internal and extenal factors which are likely to effect the institution during the planning horizon.

(3) The establishment of quantifiable goals and objectives which must address, at a minimum, the areas of capitalization, asset quality, loan volume, profitability, operating expenses, marketing, human resources, liquidity, and, where applicable, interest rate risk.

(4) Action plans which evidence how goals are planned to be acheived. These action plans must include, at a minimum, a description of the proposed actions, a cost/benefit analysis, specific implementation schedules, and an assignment of individual responsibilities.

(c) Each plan will include pro forma financial statements for each year of the plan and a detailed monthly operating budget for the first year of the plan.

(d) Each System institution shall have a board of directors approved policy which outlines the steps and process for completing the plan. This policy must include, at a minimum, the establishing of overall timetables for developing the plan, the assignment of accountability for the overall planning process, and the establishment of monitoring, control, and reporting processes for measuring performance under the plan.

Dated: May 4, 1988.
David A. Hill,
Secretary Farm Credit Administration Board
[FR Doc. 88-10185 Filed 5-11-88; 8:45 am]
BILLING CODE 6705-01-M

12 CFR Parts 614, 615 and 618

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Public Hearings

AGENCY: Farm Credit Administration.
ACTION: Final notice of hearings on proposed regulations.

SUMMARY: The Farm Credit Administration (FCA) announces forthcoming public hearings on proposed regulations governing borrower rights and establishing minimum permanent capital standards for Farm Credit System (System) institutions. These proposed regulations are published in two separate documents elsewhere in this issue of the **Federal Register**. The FCA Board has decided to hold public hearings because of the continuing interest expressed to the FCA by those impacted by the regulations.

DATES: The public hearings on borrower rights will be held beginning at 10:00 a.m. on June 8, 1988. The public hearing on minimum permanent capital standards will be held beginning at 10:00 a.m. on June 9, 1988. Requests to appear and present testimony for the public hearings must be submitted by June 1, 1988.

ADDRESS: Public hearings will be held at Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Submit requests to appear and present testimony for the public hearing in writing (in triplicate) to David A. Hill, Secretary, Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102-5090.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: A public hearing will be held at the FCA offices in McLean, Virginia commencing at 10:00 a.m. on June 8, 1988 concerning proposed regulations implementing the provisions of the Agricultural Credit Act of 1987 concerning new borrower rights.

A public hearing will be held at the FCA offices in McLean, Virginia commencing at 10:00 a.m. on June 9, 1988 concerning proposed regulations establishing a minimum permanent capital standard for System institutions.

A person who wishes to present testimony at a session of either or both hearings must request that their name be placed on the calendar by June 1, 1988. Requests will be honored in the order received. The request should state the name, address and telephone number of the person wishing to testify and the general nature of the testimony which they will offer.

Formal presentation will be restricted to 5 minutes per person. In order to facilitate discussion on the record, witnesses must submit a detailed or summary statement of the text of their comments prior to the hearing. Submission deadline for statements or detailed summaries is also June 1. Persons will be notified by the FCA of acceptance of their requests. All documents and testimony received by the FCA as part of the public hearing process will be made part of the public record and will be available for public inspection at the FCA's offices in McLean, Virginia.

The FCA notes that the hearing is to solicit the views of interested parties concerning the content of the regulations and their application to System institutions. The FCA will not accept testimony or written statements in connection with the hearing which are not confined to this subject.

Date: May 4, 1988.
David A. Hill,
Secretary, Farm Credit Administration Board.
[FR Doc. 88-10191 Filed 5-11-88; 8:45 am]
BILLING CODE 6705-01-M

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.
ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration Board (Board) proposes amendments to Subparts A, B, C, and O of Part 615, which govern the funding of Farm Credit System (System) institutions by means of issuance of securities. The proposed amendments are necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233, which was enacted on January 6, 1988. The 1987 Act anticipates that certain powers previously exercised by the System finance committees will be transferred to the Federal Farm Credit Banks Funding Corporation upon the election of its new board of directors. The proposed regulations also contain conforming changes to reflect certain statutory reorganization requirements for System institutions. The Board determined that this amendment to the regulations should be proposed for public comment.

DATE: Written comments are due on or before June 13, 1988.

ADDRESS: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
Alan Glenn, Special Examination Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4225, TDD (703) 883-4444,
or
James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The proposed amendments are necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987 (1987 Act) Pub. L. 100-233, which was enacted on January 6, 1988.

Subpart A of Part 615 contains regulations that define the funding activities of the System and the role of the Federal Farm Credit Banks Funding Corporation (Funding Corporation). Sections 615.5000 and 615.5010 are amended to delete references to the finance committees or their subcommittees and replace them with references to the Funding Corporation, which, under the 1987 Act amendments, has statutory authority to, acting for the banks, approve the amount, maturities, rates of interest, and participations by the several banks in each issue of joint, consolidated, or Systemwide obligations.

References to the role of district boards of directors are also deleted from § 615.5010 to reflect the elimination of such boards by the 1987 Act. Reference to "supervision" in § 615.5010 is deleted and replaced by the word "regulation" to more closely reflect the language contained in section 1.2 of the Act.

Section 615.5030, which sets forth authority of System institutions to borrow from commercial banks is amended by adding a new § 615.5030(b),

which provides that the Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) may borrow from commercial banks with the approval of the Farm Credit Administration as provided in section 6.24(a)(11) of the Act.

Subpart B of Part 615 contains regulations concerning the collateral required for issuance of obligations by System institutions. Section 615.5050(a) is amended by deleting reference to "long term" in describing maturities of notes, bonds, debentures, and similar obligations requiring collateralization consistent with section 4.3(c) of the Act. Sections 615.5050 and 615.5060 are amended to reflect the mergers required by the 1987 Act.

Section 615.5050 is amended to limit the collateral value of any loan to the maximum amount authorized by the Act or Part 614 of these regulations.

Section 615.5060(b) is deleted. The bonds issued under the superseded Federal Farm Loan Acts, which required separate accounting for collateral purposes, have been retired.

Subpart C of Part 615 contains regulations governing the issuance of notes, bonds, debentures, and similar obligations by System institutions. Subpart C is revised to reflect the new responsibilities of the Funding Corporation which were previously exercised by the finance committees. Section 615.5100 authorizes the System banks to issue individual, consolidated and Systemwide obligations. The requirement that each issuance be authorized by resolution of each issuing bank is now placed in § 615.5101(b). In addition to prescribing the content of the resolution of the issuer's board of directors, § 615.5101 is revised to set forth required Farm Credit Administration approval, Farm Credit Administration consultation with the Secretary of the Treasury, required consultation by System representatives with the Secretary of the Treasury and a cross-reference to the requirements of Subpart B of Part 615 concerning collateral for the issuance of obligations.

Section 615.5102, prescribes that the Funding Corporation shall have the responsibility, acting for the banks, for determining the amount, maturities, rates of interest, terms and conditions of participation by the System banks in conjunction with each issue. The Funding Corporation is also given responsibility for developing funding guidelines, priorities and objectives in conjunction with the asset/liability management policies of the banks.

Section 615.5103, which required the finance committees devise debt maturity guidelines, funding priorities, and objectives, is deleted, since these guidelines, priorities, and objectives have in practice been replaced by the asset/liability management policies referred to by § 615.5102(b).

Subpart O of Part 615 contains regulations governing the form in which Farm Credit securities may be issued. Section 615.5450 provides for the issuance of consolidated bonds, consolidated Systemwide notes, and consolidated Systemwide bonds in book-entry form. The consolidated bonds of the 12 Federal intermediate credit banks and the 13 banks for cooperatives dated before January 1, 1978 are no longer outstanding so the reference to these bonds is deleted from § 615.5450 (b) and (c).

Section 615.5450 also reflects the repeal of the authority of the Finance Committee and the new authority given to the Funding Corporation to determine whether bonds should be issued in definitive form. Section 615.5460 is amended to reflect the mergers of banks authorized by the Agricultural Credit Act in 1987.

Section 615.5497 concerning loss from payment of spurious consolidated bonds is deleted because the bonds discussed therein are no longer outstanding.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 is revised to read as follows:

Authority: 12 U.S.C. 2154, 2160, 2202(b), 2243, 2252, 2278b–6; Sec. 301(a) of Pub. L. 100–233.

Subpart A—Funding

2. Sections 615.5000, 615.5010, and 615.5030 of Part 615 are revised to read as follows:

§ 615.5000 General responsibilities.

(a) The System banks, acting through the Federal Farm Credit Banks Funding Corporation (Funding Corporation), have the primary responsibility for obtaining funds for the lending operations of the System institutions.

(b) The System's funding operations have a significant impact upon the investment community, the general public, and the national economy in both the volume and the manner by which funds are raised. The Farm Credit Administration supervises compliance with the statutory collateral requirements for the debt obligations issued. The Chairman of the Farm Credit Administration, under policies adopted by the Board, consults with the Secretary of the Treasury concerning the System's funding activities, pursuant to section 5.10 of the Act.

§ 615.5010 Funding Corporation.

(a) The Funding Corporation is authorized to issue, market, and handle System obligations and, handle, upon request of the banks, interbank or intersystem flows of funds and investment portfolios. The Funding Corporation shall maintain accurate and timely records. The System banks shall provide for the sale of obligations through the Funding Corporation by negotiation, offer, bid, syndicate sale, and for the delivery of such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) The interaction of the System with the financial community shall be conducted principally through the Funding Corporation. The Funding Corporation shall be subject to regulation and examination by the Farm Credit Administration.

§ 615.5030 Borrowings from commercial banks.

(a) The System bank boards, by resolution, shall authorize all commercial bank borrowings.

(b) The Financial Assistance Corporation may borrow from commercial banks only with the approval of the Farm Credit Administration.

3. Subpart B of Part 615 is revised to read as follows:

Subpart B—Collateral.

Sec.
615.5050 Collateral requirements.
615.5060 Special collateral requirement.
615.5090 Reduction in carrying value of collateral.

Subpart B—Collateral

§ 615.5050 Collateral requirements.

(a) Each bank shall have on hand at the time of issuance of any notes, bonds, debentures, or similar obligations, and at all times thereafter maintain, free from any lien or other pledge, assets consisting of notes and other obligations representing loans made under the authority of the Act, or real or personal property acquired in connection with loans made under this Act, other bank

assets (including marketable securities) approved by the Farm Credit Administration, cash, or cash equivalents in an aggregate amount equal to the sum of consolidated and Systemwide bonds, Farm Credit investment bonds, consolidated Systemwide notes, other notes and similar obligations, and all other known and recorded liabilities outstanding for which the bank is primarily liable.

(b) The collateral value of eligible investments (as defined in § 615.5140) shall be the lower of cost or market value.

(c)(1) Except as provided in this subsection, the collateral value of notes and other obligations representing loans made under the authority of any Farm Credit Act shall be the unpaid principal of loans (except as provided for in § 615.5090), excluding undisbursed loan funds held by the bank or the association and funds held for account of borrowers and purchasers.

(2) The collateral value of loans in process of liquidation, foreclosures, judgments, property acquired in the liquidation of loans, and real estate sales contracts shall be the lesser of recovery value or investment value.

(3) The collateral value of loans which have been restructured by any action, such as an extension, deferment, or partial release, shall be the new unpaid balance of the loan.

(4) Collateral shall not include the amount of any loan that exceeds the maximum amount authorized under the Act or Part 614 of these regulations.

(d) Each bank shall have procedures which will ensure that the bank is in compliance with the statutory requirements for maintenance of collateral. Such procedures shall include provisions for:

(1) Adequate safekeeping facilities;

(2) Methods to determine that debt instruments meet all requirements of law and regulations;

(3) A certified report by a bank officer at each regular meeting of the board of directors. The report should certify to the eligiblity and the adequacy of collateral. Items to be reported will include but not be limited to the total amount of eligible collateral, amount of ineligible loans, amount of deductions, and the amount of excess collateral; and

(4) Written procedures and practices to ensure that there will be a high degree of accuracy in protecting and accounting for the collateral.

§ 615.5060 Special collateral requirement.

(a) If the chief counsel for a System bank or association has determined, in writing, that bank procedures provide sufficient safeguards to assure that a real estate mortgage loan made by the bank will be secured by a first lien or its equivalent on interest in the primary real estate security, an attorney lien certification need not be obtained at the time a note is accepted for collateral. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of loan closing, unless before the end of each period, an attorney has certified that the interest of the bank in the primary real estate security for the loan is a first lien on the borrower's interest or its equivalent from a security standpoint.

(b) A loan participation agreement to which a System bank or association is a participant and involving a loan originated by another lender shall constitute an obligation meeting the collateral requirements of § 615.5050(a).

§ 615.5090 Reduction of carrying value of collateral.

When the bank or Farm Credit Administration determines that a loan did not conform to the requirements of the law or regulations at the time the loan was closed, such loan shall be withdrawn from collateral until the cause of ineligibility is remedied. When a loan has been classified as a loss loan, the bank shall adjust the collateral value of the loan accordingly.

Subpart C—Issuance of Bonds, Notes, Debentures, and Similar Obligations

4. Sections 615.5100, 615.5101, and 615.5102 are revised to read as follows:

§ 615.5100 Authority to issue.

The Act authorizes each bank of the System, subject to the collateral requirements of section 4.3(c) of the Act, to issue:

(a) Notes, bonds, debentures, or other similar obligations, to members of the general public;

(b) Consolidated obligations, together with any or all banks organized and operating under the same title of the Act, to members of the general public;

(c) Systemwide obligations, together with other banks of the System, to members of the general public; and

(d) Investment bonds to the authorized purchasers subject to the limitations contained in the regulations set forth in Subpart D.

§ 615.5101 Requirements for issuance.

Each issuance of debt obligations shall meet the following requirements:

(a) Each obligation except investment bonds shall be issued through the Federal Farm Credit Banks Funding Corporation as agent for System banks.

(b) Each debt obligation shall be authorized by resolution of the board(s) of directors of the issuer(s). Each participating bank shall provide, in its authorizing resolution, for its primary liability on the portion of any consolidated or Systemwide obligation issued on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration, in accordance with section 4.4 of the Act, in the event any bank primarily liable therefore is unable to pay.

(c) Each issuance of debt obligations shall meet the collateral requirements set forth in Subpart B.

(d) Each issuance of debt obligations shall be approved by the Farm Credit Administration in accordance with § 615.5102.

(e)(1) Consultation with the Secretary of the Treasury required by 31 U.S.C. 9108 shall be conducted by System representatives and shall have occurred prior to each debt issuance.

(2) Under policies adopted by the Board of the Farm Credit Administration, the Chairman will consult with the Secretary of the Treasury on a regular basis concerning the exercise by the System of the powers conferred under section 4.2 of the Act, as amended.

§ 615.5102 Issuance of debt obligations through the funding corporation.

(a) The amount, maturities, rates of interest, terms and conditions of participation by the System banks in each issue shall be determined by the Funding Corporation acting for the banks of the System established pursuant to section 4.9 of the Act, subject to the approval of the Farm Credit Administration in accordance with this section.

(b) The Funding Corporation shall plan and develop funding guidelines, priorities, and objectives based upon the asset/liability management policies of the System institutions and the requirements of the market. The guidelines, priorities, and objectives shall be designed to ensure that the debt marketing responsibilities of the Funding Corporation will continue to provide flexibility for the banks and are fiscally sound.

(c) For all debt issuances conducted by the Funding Corporation, the specific prior approval of the Farm Credit Administration must be obtained prior to the distribution and sale of the obligation pursuant to section 4.9 of the Act.

5. Section 615.5105 is amended by revising paragraph (b) to read as follows:

§ 615.5105 Consolidated systemwide notes.

* * * * *

(b) Prices shall be on a discount yield basis or as determined by the Funding Corporation.

* * * * *

Subpart 0—Issuance of Farm Credit Securities

6. Section 615.5450 is revised to read as follows:

§ 615.5450 Book entry and definitive notes and bonds.

(a) The System banks operating under the same title of the Act may issue consolidated bonds, dated on or after January 1, 1978, in bookentry form, in denominations of $1,000 or multiples thereof. There are still outstanding consolidated bonds of the Federal land banks dated before January 1, 1978, in definitive form in denominations of $1,000, $5,000, $10,000, $50,000, $100,000, and $500,000.

(b) The System banks may issue consolidated Systemwide notes in book-entry form, in denominations of $5,000, $10,000, $50,000, $100,000, $500,000, $1,000,000, and $5,000,000.

(c) The System banks may issue consolidated Systemwide bonds in book-entry form, in denominations of $1,000 or multiples thereof for issues with an original maturity over 1 year and 1 month and $5,000 or multiples thereof for issues with an original maturity of under 1 year and 1 month.

(d) Consolidated and consolidated Systemwide bonds and discount notes may be issued in definitive form as determined to be appropriate by the Funding Corporation and as approved by the Chairman of the Farm Credit Administration.

§§ 615.5451—615.5453 [Removed and Reserved]

7. Sections 615.5451 through 615.5453 are removed and reserved.

8. Section 615.5460 is amended by revising paragraphs (b) and (c) to read as follows:

§ 615.5460 Definition of terms for book-entry issuance of Farm Credit securities.

* * * * *

(b) "Banks of the Farm Credit System" means all of the Farm Credit Banks or all of the banks for cooperatives, or all of the banks of the System.

(c) "Farm Credit securities" means consolidated notes, bonds, debentures, or other similar obligations of the System banks and Systemwide notes, bonds, debentures, or similar obligations issued under the Farm Credit Act of 1971, or laws repealed thereby, the completion and delivery of which is or has been undertaken by a Reserve Bank as agent of the banks of the System.

* * * * *

§ 615.5497 [Removed and Reserved]

6. Section 615.5497 is removed and reserved.

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10189 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Parts 622 and 623

Rules of Practice and Procedure; Practice Before the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Agricultural Credit Act of 1987 (Pub. L. 100-233) enacted on January 6, 1988, amended the provisions of the Farm Credit Act relating to the definition of a Farm Credit System (System) institution and to the imposition of civil money penalties. Accordingly, the Farm Credit Administration (FCA) proposes revisions to its implementing regulations. The FCA seeks comments on its proposal.

DATE: Comments are due on or before June 13, 1988.

ADDRESS: Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Kathleen Eyer, Chief, Supervision Division, Office of Analysis and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4455, TDD (703) 883-4444, or

Elizabeth M. Dean, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Section 423 of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act) amended the Farm Credit Act (Act). Title VI, Subtitle A, section 6.0 and section 207(d) of the 1987 Act, statutorily direct the revocation of the charter of the Farm Credit System Capital Corporation (FCSCC) by the Farm Credit Administration (FCA), thereby amending section 5.35(3) of the Act. In addition, section 207(d) of the 1987 Act provides for the amendment of section 5.35(3) of the Act to include the Farm Credit System Financial Assistance Corporation (FCSFAC). Section 811(a)(1)(B) of the 1987 Act added the Federal Agricultural Mortgage Corporation (FAMC), and section 204 of the 1987 Act amended section 4.9 of the Act establishing the Federal Farm Credit Banks Funding Corporation (FFCBFC) as Farm Credit System institutions.

It is proposed that the definition of "institution in the System", "System institution" and "institution" as defined in Subpart A of 12 CFR Part 622 relating to rules applicable to the formal hearings and in 12 CFR Part 623 relating to practice before the FCA, be changed to remove FCSCC and to add FCFAC, FAMC and FFCBFC. In order to avoid amending the definition any time a new System institution is statutorily created, the proposed definition excludes the Farm Credit System Assistance Board, and the Farm Credit System Insurance Corporation which are not identified as System institutions in the 1987 Act, although they are institutions established by the 1987 Act.

To comply with a technical change set forth in section 805 of the 1987 Act, Part D of Title IV has been redesignated as Part E of Title IV. Therefore, to be consistent with the 1987 Act, and specifically, section 5.35, it is proposed that Subpart A, § 622.2 of 12 CFR and § 623.2 of 12 CFR are amended to include System institutions enumerated in section 1.2 of the Act, any System institution chartered pursuant to or established by the Act except for the FCSAB and FCSIC, and any service organization chartered under Part E of Title IV of the Act.

The 1987 Act, section 423, also expands the basis upon which the FCA can assess a civil money penalty and requires the agency to solicit the views of the institution or person to be assessed before imposing a civil money penalty assessment. The FCA, therefore, proposes revisions to Subpart B of its rules of practice, 12 CFR Part 622, relating to civil money penalties.

In addition to assessment for violation of a final cease and desist order, section 5.32(a), as amended by section 423(a) of the 1987 Act, authorizes the agency to impose assessments for violation of any provision of the Farm Credit Act or any regulation issued thereunder. Therefore, the agency proposes to make a technical amendment to § 622.52 to reflect this new authority. The maximum amount of civil penalty for violation of a final

cease and desist order is a maximum of $1,000 per day for each day the violation continues. The maximum amount of civil penalty for violation of the Act, as amended, or any regulation issued thereunder is $500 per day for each day the violation continues. Since there is a range of possible amounts that can be assessed, the proposed regulation does not address amounts.

Section 423(b) of the 1987 Act requires the agency to notify an institution or person to be assessed a civil money penalty of the violation or violations alleged to have occurred or to be occurring in order to solicit the views of the institution or person regarding the imposition of such penalty, before the agency determines whether to assess a penalty or determine an appropriate amount. The FCA proposes to add a new section, designated as § 622.53 (Notification of Alleged Violations), which restates this requirement. No time requirements are set forth in this proposed section since the FCA will notify the institution or person of the amount of time permissible for a response upon solicitation of their views.

The FCA also proposes to make two technical revisions to Subpart B. In order to clarify that the factors contained in section 5.32(b) of the Farm Credit Act ("financial resources and good faith of the institution or person charged, gravity of the violations, any previous violations, and such other matters as justice may require") are to be taken into account in determining the amount of any penalty assessed, the FCA proposes to move those factors from § 622.59 to § 622.54.

Because of the addition of new sections, the FCA proposes to redesignate § 622.53 (Notice of Assessment) as § 622.55 and to revise that section to require the FCA Board to take into account any views submitted by an institution or person and to taken into account the statutory factors contained in § 622.54, as redesignated.

Section 622.54, which currently permits the General Counsel to solicit the views of an individual or institution to be assessed, prior to the issuance by the agency of a notice of assessment, would be deleted in its entirety, as being duplicative of the new requirement to be added at § 622.53.

Due to the changes noted above, §§ 622.55 through 622.58 are redesignated as §§ 622.56 through 622.60, respectively. Section 622.51 (Definitions) is revised to correct two typographical errors. For the sake of convenience, Subpart B of Part 622 is restated in its entirety. Unless noted above, Part 622 of 12 CFR remains unchanged.

List of Subjects in 12 CFR Parts 622 and 623

Accountants, Administrative practice and procedure, Crime, Investigations, Lawyers, Penalties.

As stated in the preamble, Part 622, Subparts A and B, and Part 623, of Chapter VI, Title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 622 is revised to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37, Pub. L. 99–205, 99 Stat. 1678, Pub. L. 100–233, 101 Stat. 1568, 12 U.S.C. 2243, 2244, 2252, 2261–2273.

2. Section 622.2 is amended by revising paragraph (d) to read as follows:

Subpart A—Rules Applicable to Formal Hearings

§ 622.2 Definitions.

* * * * *

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation, and any service organization chartered under Part E of Title IV of the Act.

* * * * *

3. Subpart B, §§ 622.51 through 622.75, is revised to read as follows:

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

Sec.

622.51 Definitions.
622.52 Purpose and scope.
622.53 Notification of alleged violations.
622.54 Relevant considerations.
622.55 Notice of assessment of civil money penalty.
622.56 Request for formal hearing on assessment.
622.57 Waiver of hearing; consent.
622.58 Hearing on assessment.
622.59 Assessment order.
622.60 Payment of civil money penalty.
622.61–622.75 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

§ 622.51 Definitions.

Unless noted otherwise, the definitions set forth in §622.2 of Subpart A shall apply to this subpart.

§ 622.52 Purpose and scope.

The rules and procedures specified in this subpart and in Subpart A are applicable to proceedings by the FCA to assess and collect civil money penalties:

(1) For a violation of the terms of a final cease and desist order issued under sections 5.25 or 5.26 of the Act, or

(2) For violation of any provision of the Act or any regulation issued under the Act.

§ 622.53 Notification of alleged violations.

Before determining whether to assess a civil money penalty and determining the amount of such penalty, the FCA shall notify the institution or person to be assessed of the violation(s) alleged to have occurred or to be occurring, and shall solicit the written views of the institution or person regarding the imposition of such penalty.

§ 622.54 Relevant considerations.

In determining the amount of any penalty assessed, the FCA shall consider the financial resources and good faith of the institution or person charged, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 622.55 Notice of assessment of civil money penalty.

(a) *Notice of assessment.* After considering any written materials submitted in accordance with § 622.53 and the factors stated in §622.54, the FCA commences a civil money penalty proceeding with the issuance of a notice of assessment of a civil money penalty. The notice of assessment shall state:

(1) The legal authority for the assessment;

(2) The amount of the civil money penalty being assessed;

(3) The date by which the civil money penalty shall be paid;

(4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;

(5) The right of the institution or person being assessed to a formal hearing to challenge the assessment; and

(6) The time limit to request such a formal hearing.

(b) *Service.* The notice of assessment may be served upon the institution or person being assessed by personal

service or by certified mail with a return receipt to the institution's or the person's last known address. Such service constitutes issuance of the notice.

§ 622.56 Request for formal hearing on assessment.

An institution or person being assessed may request a formal hearing to challenge the assessment of a civil money penalty. The request must be filed in writing, within 10 days of the issuance of the notice of assessment, with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102–5090.

§ 622.57 Waiver of hearing; consent.

(a) *Waiver.* Failure to request a hearing pursuant to § 622.56 constitutes a waiver of the opportunity of a hearing and the notice of assessment issued pursuant to § 622.55 shall constitute a final and unappealable order.

(b) *Consent.* Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative is deemed to have consented to the issuance of an assessment order.

§ 622.58 Hearing on assessment.

(a) *Time and place.* An institution or person requesting a hearing shall be informed by order of the Board of the time and place set for hearing.

(b) *Answer; procedures.* The hearing order may require the institution or person requesting the hearing to file an answer as prescribed in § 622.5 of Subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and Subpart A of these Rules shall apply to the hearing.

§ 622.59 Assessment order.

(a) *Consent.* In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil money penalty. In its assessment order, the Board may reduce the amount of the penalty specified in the notice of assessment.

(b) *Effective date and period.* An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(c) *Service.* An assessment order may be served by personal service or by certified mail with a return receipt to the last known address of the institution or person being assessed. Such service constitutes issuance of the order.

§ 622.60 Payment of civil money penalty.

(a) *Payment date.* Generally, the date designated in the notice of assessment for payment of the civil money penalty will be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the statute would be better served if the 60-day period were changed, the Board may shorten or lengthen the period or make the civil money penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of a civil money penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil money penalty is to be paid or collected.

(b) *Method of payment.* Checks in payment of civil money penalties should be made payable to the "Farm Credit Administration". Upon collection, the FCA shall forward the amount of the penalty to the Treasury of the United States.

§§ 622.61–622.75 [Reserved]

PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION

4. The authority citation for Part 623 is revised to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37, Pub. L. 99–205, 99 Stat. 1678, Pub. L. 100–233, 101 Stat. 1568, 12 U.S.C. 2243, 2244, 2252, 2261–2273.

5. Section 623.2 is amended by revising paragraph (d) to read as follows:

§ 623.2 Definitions.

* * * * *

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation and any service organization chartered under Part E of Title IV of the Act.

* * * * *

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10187 Filed 5-11-88; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 624

Regulatory Accounting Practices

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), publishes for comment proposed amendments to Part 624 relating to regulatory accounting practices (RAP). These proposed regulations implement amendments to the Farm Credit Act of 1971 (1971 Act) (12 U.S.C. 2001, et seq.), made by the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100–233). The proposed regulations extend the authority for Farm Credit System (System) institutions to use RAP until 1992 and provide that RAP may only be used for certain interest rate evaluations.

DATE: Written comments are due on or before June 13, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Tom Dalton, Office of Analysis and Supervision, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4475, TDD (703) 883–4444

or

Gary Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 5.19(b) of the 1971 Act, as amended by the Farm Credit Act Amendments of 1986 (Pub. L. 99–509), required the FCA to issue regulations under which System institutions would be authorized to use RAP. FCA promulgated regulations in 1986 (12 CFR 624.100, et seq.) which implemented the RAP authorities by authorizing institutions to use RAP for two purposes. An institution could use RAP to defer certain interest costs and portions of the provision for loan losses for the purpose of evaluating its costs of doing business in order to adjust the rates charged to its borrowers as necessary to meet competitive interest rates. In addition, an institution could use RAP to maintain the value of its stock and participation certificates at

par and thus enable it to retire stock at par value (based on a RAP determination) even though the stock was worth less than par value based on generally accepted accounting principles (GAAP).

The FCA Board now proposes amendments to these regulations to reflect the recently enacted amendments to the 1971 Act. The 1987 Act amends the 1971 Act by extending, until 1992, the authorized period during which System institutions can use RAP. In addition, the enactment of several other amendments to the 1971 Act requires that FCA regulations restrict the purposes for which RAP can be used. For the reasons stated herein, the FCA Board has proposed amendments to its regulations which would delete the authority for System institutions to use RAP to determine the value of stock for retirement purposes.

When the RAP authorities were originally enacted in 1986, their purpose was primarily to enable institutions to continue to operate in the normal course of business and retire their stock at par value even though it was worth less than par value under GAAP. That purpose has been fundamentally changed by the 1987 Act.

Under section 4.9A of the 1987 Act, institutions are required to retire "eligible borrower stock" at par value regardless of the book value of such stock. Eligible borrower stock is defined to include all stock, participation certificates, and allocted equities owned by borrowers and other financing institutions (OFIs) on the date of enactment of the 1987 Act, or issued within the earlier of 9 months after such date of enactment or the implementation of a new capitalization plan by the institution involved. Eligible borrower stock also includes certain stock previously retired at less than par value or currently frozen in institutions during liquidations. The requirements of section 4.9A must be exercised by institutions without regard to the book value of the stock or any FCA approval or regulatory authority. If institutions do not have the resources to retire such stock at par value, they can apply for assistance from the Farm Credit System Assistance Board (Assistance Board) through the Farm Credit System Financial Assistance Corporation (FAC) for that purpose.

Section 4.3A, as added by the 1987 Act, requires System institutions to begin issuing new types of securities that will be included within its "permanent capital" and which are not categorized as "eligible borrower stock". This section requires that such securities be issued and retired in accordance with the bylaws of the institution subject to a few statutory requirements. Securities that are included in permanent capital may only be retired at the discretion of the board of directors of the institution. In addition, such securities are required to be considered as an "at risk" investment. In addition, section 4.3A(g) provides that to the extent any of the new capitalization provisions are inconsistent with other provisions of the Act, the new provisions shall control.

Section 6.4, as added by the 1987 Act, authorizes each System institution to request assistance from the Assistance Board when the book value of its stock falls below 100% of par value, on a GAAP basis, and requires each System institution to seek assistance from the Assistance Board when the book value falls below 75% of par value, on a GAAP basis. While the Assistance Board may provide assistance to an institution to enable it to continue operations, the Assistance Board can deny a request for assistance if it determines that the entity cannot be returned to viability. In that event, further financial liability of the Assistance Board will be limited to ensuring that the institution will have sufficient funds to retire, at par value, its "eligible borrower stock," not securities in its permanent capital.

In accordance with the 1987 Act, the proposed regulations delete those regulations which authorize institutions to retire stock on the basis of a RAP determination of its book value. The retirement of "eligible borrower stock" must be carried out in accordance with sections 4.9A and 4.3A(c). Securities included in permanent capital shall be held as risk investments and may only be retired at a value determined under GAAP, in accordance with section 4.3A and bylaws issued thereunder.

The proposed regulations continue to reflect the statement of policy contained in section 1.1 of the 1971 Act that institutions be able to use RAP to evaluate the interest rates charged on loans. In accordance with that statement of policy, the proposed regulations authorize institutions to take into consideration the use of RAP, among other factors, in evaluating the interest rates charged on loans. However, in no event shall an institution charge a rate of interest below the competitive interest rates charged by other lending institutions.

The FCA recognizes that System banks and associations are subject to competitive pressures from other financial institutions in their lending environment. System banks and associations must manage their business affairs and control their costs in order to price competitively, earn a profit, and remain viable over the long run.

The FCA has been critical of some System banks and associations during the past several years for failing to properly consider their costs when determining interest rates. Such indiscriminate loan pricing can have the effect of minimizing or eliminating an institution's earnings thus dissipating its capital to the detriment of its continued operations and ability to serve its borrowers and stockholders. For these reasons, the proposed regulations clarify that there are prudent limits to the use of RAP in determining how loans should be priced. Interest rates should be established based on a consideration of the institution's overall cost structure including, cost of funds, overhead costs, expected loan losses, provisions for adequate capital, and the desired return to stockholders.

The proposed regulations also delete references to the Farm Credit System Capital Corporation, whose charter was revoked on February 11, 1988 (53 FR 4072). In accordance with section 6.6 of the 1987 Act, the proposed regulations provide that any System institutions requesting certification to receive financial assistance from the Assistance Board may need to obtain Assistance Board approval for the continued use of RAP.

List of Subjects in 12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Credit, Rural areas.

As stated in the preamble, Part 624, Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 624—REGULATORY ACCOUNTING PRACTICES

Sec.

624.100 General.
624.101 Definitions.
624.102 Deferral of interest costs on debt.
624.103 Deferral of the provisions for loan losses.
624.104 Interest rate evaluation.
624.105 Financial reporting and disclosure.

Authority: 12 U.S.C. 2001, 2013, 2073, 2093, 2122, 2159, 2252, 2254, Pub. L. 99-509, Pub. L. 100-233.

§ 624.100 General.

(a) The regulations contained in this part implement the provisions of the Act relating to the authorities, terms, conditions, and restrictions pursuant to which a Farm Credit System (System) institution may use regulatory accounting practices to defer and capitalize a portion of its interest costs, provisions for loan losses, and

premiums paid to retire debt instruments, and to amortize such amounts.

(b) Notwithstanding the provisions of this part, if an institution requests that the Farm Credit System Assistance Board (Assistance Board) certify the institution to issue preferred stock in accordance with Title VI of the Act, the Assistance Board may further restrict the continued use of regulatory accounting practices by the institution as provided in section 6.6 of the Act.

(c) The authority to defer and capitalize costs is effective until December 31, 1992. Amounts capitalized through December 31, 1992 may be amortized over the full amortization period of 20 years, but in no instance beyond December 31, 2012.

§ 624.101 Definitions.

For the purpose of this part, the following definitions apply:

(a) "Generally accepted accounting principles (GAAP)" means that body of conventions, rules, and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated.

(b) "Institution" means any bank or association chartered under the Act.

(c) "Loans outstanding" means gross loans outstanding net of any participations sold at the end of each reporting period. The term "loan" includes loans, participations purchased, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interest in loans purchased from another lender that are recorded as assets of a reporting institution.

(d) "Regulatory accounting practices (RAP)" means those accounting methods and practices directed by statutory and regulatory requirements provided for in the Act and in this part and that are not in accordance with GAAP.

§ 624.102 Deferral of interest costs on debt.

(a) A bank may capitalize any premium paid to repurchase the bank's obligations on consolidated Systemwide notes and bonds issued on or before January 1, 1985, and may contract with a third party, including a service corporation chartered by the Farm Credit Administration, in order to perform a defeasance of these same obligations. The premium paid shall be the excess of the cost to repurchase or redeem an obligation over the recorded net book value for such obligation.

(b) A bank may capitalize a portion of its interest expenses which have been paid or will be paid during the period July 1, 1986 through December 31, 1992 on Systemwide consolidated notes and bonds issued on or before January 1, 1985. The amount of a bank's interest expense on an obligation that may be capitalized shall be limited to the excess of the bank's cost on the obligation over the market price for the obligation on October 21, 1986.

(c) An institution that defers any expenses associated with actions taken in accordance with this section shall amortize such expenses over a period not to exceed 20 years using straight-line amortization. The unamortized portion of debt-related costs that are deferred or are eligible to be deferred shall not be considered as capital of the institution.

§ 624.103 Deferral of the provisions for loan losses.

A System institution is authorized during the period July 1, 1986 through December 31, 1992, to capitalize the amount of its provision for loan losses made on an annual basis in excess of ½ of 1 percent of loans outstanding. An institution that defers a portion of its provision for loan losses in accordance with this section shall amortize such amount over a period to not exceed 20 years, using straight-line amortization. Institutions using RAP to defer their provisions for loan losses shall maintain an allowance for loan losses determined in accordance with GAAP.

§ 624.104 Interest rate evaluation.

An institution may take into consideration the use of RAP, among other factors, for purposes of evaluating the interest rates charged on loans. Such other factors include the institution's cost of funds, overhead, expected losses, margin to provide for adequate capital, return to stockholders, and any other relevant factors. In no event shall such an institution charge a rate of interest which is less than the competitive interest rates charged by other lending institutions in the same area, for a loan with similar terms, to a borrower of equivalent creditworthiness and access to alternative credit.

§ 624.105 Financial reporting and disclosure.

Each institution that uses RAP in accordance with the provisions of this part shall prepare and issue its financial statements to stockholders in accordance with Part 620 of this chapter. In addition, each such institution shall disclose clearly in the management commentary to its financial statements the purpose and use of the regulatory accounting practices adopted by the institution and shall reconcile the differences between the application of GAAP and RAP.

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10188 Filed 5-11-88; 8:45 am]

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federal register

Thursday
May 12, 1988

Part III

Department of Justice

Immigration and Naturalization Service

Department of State

Bureau of Consular Affairs

8 CFR Parts 212, 214, 217, 236, 242, 245, 248, and 299

Visa Waiver Pilot Program; Proposed Rule

22 CFR Part 41

Visas; Passports and Visas Not Required for Certain Nonimmigrants; Notice of Proposed Rulemaking

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 214, 217, 236, 242, 245, 248, and 299

[INS Number 1109-88]

Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the Visa Waiver Pilot Program provided at section 313 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) which added the pilot program as section 217 of the Immigration and Nationality Act [8 U.S.C. 1187]. Under this program, the nonimmigrant visa requirement can be waived for certain aliens applying for admission as nonimmigrant visitors for a period not to exceed ninety days.

DATE: Comments must be received no later than June 13, 1988.

ADDRESS: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Yanghe Peggy Wong, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., Room 7123, Washington, DC 20536, Telephone: (202) 633-4033.

SUPPLEMENTARY INFORMATION: The Visa Waiver Pilot Program was established by Congress to determine if a visa waiver provision could facilitate international travel and promote the more effective use of the resources of affected government agencies while not posing a threat to the welfare, health, safety, or security of the United States. In furtherance of this aim, this rule contains provisions designed to facilitate travel, facilitate or reduce the work of affected agencies, and ensure that vital national interests are protected. The Department of State concurs only in 8 CFR 212.1(i) of this rule.

This rule adds a new Part 217 of 8 CFR, and amends existing Parts 212, 214, 236, 242, 245, 248, and 299, to conform with new section 217 of the Immigration and Nationality Act (Act).

Section 217.2 sets forth the eligibility criteria for individual participation in the program based on the provisions of section 217 of the Act and other applicable provisions of the Act.

Section 217.3 provides the limits on eligibility for immigration benefits which are provided in the Act, but makes provision for a brief period of satisfactory departure under emergent circumstances and for readmission to the United States after brief departures to foreign contiguous territory.

Section 217.4(a) provides that persons who are excludable from the United States may not be admitted as Visa Waiver Pilot Program visitors regardless of whether or not they have secured a waiver of grounds of excludability or consent to reapply for admission. It is consistent with the provisions of section 217(a)(5) of the Act that persons who are known to be excludable be required to secure a visa in order to apply for admission to the United States.

Section 217.4(b) provides that applicants for admission under section 217 of the Act who are found to be excludable from the United States or inadmissible as visitors shall be excluded and removed from the United States without a hearing before an immigration judge other than in connection with an application for asylum in the United States.

Section 217.4(c) provides that aliens who have been admitted under Part 217 who are found to be deportable from the United States shall be removed from the United States without a hearing before an immigration judge other than in connection with an application for asylum. Section 217.4 (b) and (c) implement section 217(b)(4) of the Act which requires that persons who wish to utilize the visa waiver provisions of section 217 of the Act must waive their rights to normal procedures of inquiry, review, and appeal regarding admissibility and deportability.

Section 217.5 lists designated countries for the Visa Waiver Pilot Program. The United Kingdom has been designated as the initial Visa Waiver Pilot Program country in that it meets the criteria set forth in section 217(c)(2) of the Act, and in that it generates a significant portion of the total number of nonimmigrant visitors to the Untied States. The selection of the United Kingdom as a Visa Waiver Pilot Program country is designed to mitigate the demand for nonimmigrant visas at United States consular facilities in Great Britain. For this reason, a distinction is made concerning various categories of British residents, nationals or citizens based on the British nationality laws. Citizens of British Commonwealth countries or British dependent territories are not eligible for the visa waiver. This rule provides that only British citizens who have full and unrestricted permission to reside in the United Kingdom will be eligible to apply for admission as Visa Waiver Pilot Program applicants.

Section 217.6 provides the criteria for carrier agreements under section 217 of the Act. These criteria are based on the provisions of section 217(a)(4) and 217(d) of the Act.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291.

The information collection requirements contained in this regulation have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act.

List of Subjects

8 CFR Parts 212, 214, 236, 242, 245, 248

Administrative practice and procedures, Aliens, Passports and visas.

8 CFR Part 217

Administrative practice and procedures, Aliens, Reporting and recordkeeping requirements, Passports and visas.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252.

2. In § 212.1, paragraph (i) is added to read as follows:

§ 212.1 Documentary requirements for nonimmigrant.

* * * * *

(i) *Visa Waiver Pilot Program.* A visa is not required of any alien who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant pursuant to the provisions of section 217 of the Act and Part 217 of this chapter if such alien is a national of a country designated under the Visa Waiver Pilot Program, who seeks admission to the United States for

a period of 90 days or less as a visitor for business or pleasure.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187.

4. In § 214.2 existing paragraph (b)(3) is redesignated as paragraph (b)(4) and a new paragraph (b)(3) is added to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(3) *Visa Waiver Pilot Program.* Special requirements for admission and maintenance of status for visitors admitted to the United States under the Visa Waiver Pilot Program are set forth in section 217 of the Act and Part 217 of this chapter.

* * * * *

5. A new Part 217 is added to read as follows:

PART 217—VISA WAIVER PILOT PROGRAM

Sec.
217.1 Scope.
217.2 Eligibility.
217.3 Maintenance of status.
217.4 Excludability and deportability.
217.5 Designated countries.
217.6 Carrier agreements.

Authority: 8 U.S.C. 1187.

§ 217.1 Scope.

The Visa Waiver Pilot Program is established solely pursuant to the provisions of section 217 of the Act and subject to all conditions and restrictions stipulated in that section, including those relating to the length of the program and the number of countries which may be designated as Visa Waiver Pilot Program countries.

§ 217.2 Eligibility.

(a) *General.* Notwithstanding the provisions of section 212(a)(26)(B) of the Act, nonimmigrant visa may be waived for an alien who is a national of a country enumerated in § 217.4 of this part who:

(1) Is classifiable as a visitor as defined in section 101(a)(15)(B) of the Act;

(2) Seeks admission to the United States for a period not to exceed ninety days;

(3) Is in possession of a round-trip, nontransferable transportation ticket valid for a period of not less than one year, which is nonrefundable other than in the country in which issued or in the country of the alien's nationality or residence, and which was issued by a carrier which has entered into an agreemnt as provided in § 217.6 of this part;

(4) Is in possession of a completed and signed Form I–791, Visa Waiver Pilot Program Information Form;

(5) Arrives in the United States on a carrier which has entered into an agreement as provided in § 217.6 of this part;

(6) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination as to his or her admissibility other than on the basis of an application for asylum in the United States as provided in section 208 of the Act; and

(7) Waives any right to contest any action for deportation, other than on the basis of an application for asylum in the United States as provided in section 208 of the Act.

(b) *Round-trip transportation ticket.* The term "round-trip ticket" as used in this part means a return ticket which will return the traveler to the point of origin, regardless of the number of places visited.

(c) *Comprehensive nature of Visa Waiver Pilot Program criteria.* An alien is eligible for a visa waiver under this part only if he or she meets all of the eligibility criteria set forth in paragraph (a) of this section.

§ 217.3 Maintenance of status.

(a) *Eligibility for immigration benefits.* An alien admitted to the United States under this part may be admitted as a visitor for business or pleasure for a period not to exceed ninety days. An alien admitted under this part must maintain his or her status as a visitor as defined in section 101(a)(15)(B) of the Act and must not engage in activities in the United States which are inconsistent with that status. An alien admitted under this part is not eligible for extension of his or her authorized period of temporary stay in the United States; is not eligible for adjustment of his or her status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of the Act, other than as an immediate relative as defined in section 201(b) of the Act; and is not eligible for change of nonimmigrant status pursuant to section 248 of the Act.

(b) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed thirty days. During this period, the alien's departure from the United States may be regarded as having been accomplished satisfactorily and without violation of status.

(c) *Readmission after departure to contiguous territory.* An alien admitted to the United States under this part may be readmitted to the United States in the status of a Visa Waiver Pilot Program visitor after a departure to foreign contiguous territory provided that:

(1) His or her authorized period of temporary stay has not expired,

(2) He or she intends to depart the United States prior to the expiration of his or her authorized period of temporary stay,

(3) He or she presents a valid, unexpired passport which reflects his or her admission to the United States as a Visa Waiver Pilot Program visitor, and

(4) He or she continues to meet all criteria set forth in § 217.2(a) of this part with the exception of arrival on a signatory carrier.

An alien who applies for admission under the provisions of this section may be admitted to the United States only for the remainder of the authorized period of temporary stay which he or she was granted upon arrival in the United States in accordance with the provisions of § 217.2(a) of this part. A Visa Waiver Pilot Program visitor who applies for admission under the provisions of this section is subject to exclusion from the United States pursuant to section 212 of the Act and this part. Departure from and readmission to the United States of an alien under this subsection does not relieve any obligations and responsibilities of the carrier which initially transported such alien to the United States for admission under the provisions of this part.

§ 217.4 Excludability and deportability.

(a) *Waivers of grounds of excludability and consent to apply for admission.* Aliens who are excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act, and aliens who require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(17) of the Act may not be admitted to the United States under the provisions of this part notwithstanding the fact that the applicable ground(s) of excludability may have been waived under the provisions of section 212(d)(3) of the Act, or that the required consent of the Attorney General may have been

secured. Such aliens must secure a visa in order to be admitted to the United States as nonimmigrants. Under no circumstances may an application for waiver of grounds of excludability or for consent to apply for admission be accepted at a port of entry in connection with an application for admission under this part.

(b) *Determinations of excludability and inadmissibility.* An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act (other than section 212(a)(26)(B)) shall be excluded from the United States and removed. Such exclusion and removal shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be referred to an immigration judge for further inquiry. The removal of an alien under this section may be deferred if the alien is paroled into the custody of Federal, state, or local law enforcement agency for criminal prosecution or punishment.

(c) *Determination of deportability.* An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the deportation grounds listed in section 241 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be referred to an immigration judge for a determination of deportability.

(d) *Removal of excludable and deportable aliens.* The carrier which transported to the United States an alien who is to be removed pursuant to this section shall be immediately notified of the determination to remove such alien. Removal from the United States under this section is to be effected through use of the return portion of the round-trip ticket presented by the alien at the time of entry to the U.S. as required in § 217.2(a)(3) of this part. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States.

§ 217.5 Designated countries.

(a) *Countries.* The United Kingdom has been designated as a Visa Waiver Pilot Program country based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

(b) *Definitions.* For the purposes of this part the term "national of a Visa Waiver Pilot Program country" as used in section 217(a)(2) of the Act when applied to the United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories citizens, or citizens of British Commonwealth countries.

§ 217.6 Carrier agreements.

(a) *General.* The carrier agreements referred to in section 217(d) of the Act shall be made by the Commissioner in behalf of the Attorney General and shall be on Form I–775, Agreement Between a Transportation Line and the United States under the Visa Waiver Pilot Program. The term "carrier" as used in this part refers to the owner, charterer, lessee or authorized agent of any commercial vessel or commercial aircraft engaged in the transportation of passengers to the United States from a foreign place.

(b) *Agreement provisions.* To be authorized to transport an alien to the United States pursuant to section 217 of the Act and this part, a carrier must enter into an agreement on Form I–775 to:

(1) Transport as an applicant for admission under section 217 of the Act and this part only an alien who is a national of a Visa Waiver Pilot Program country as designated in § 217.5 of this part;

(2) Transport such an alien only if he or she is in possession of a round-trip, nontransferable transportation ticket valid for a period of not less than one year, which is nonrefundable other than in the country in which issued or in the country of the alien's nationality or residence, and which was issued by a carrier signatory to an agreement under this part;

(3) Transport such an alien only if he or she has agreed that the return portion of such ticket may be used to effect his or her removal from the United States based on a finding of excludability or deportability under § 217.4 of this part;

(4) Accept such a transportation ticket as full payment for return passage of such an alien;

(5) Transport only such an alien who has completed and signed Form I–791, Visa Waiver Pilot Program Information Form;

(6) Indemnify the United States against any costs for the transportation of such an alien if the alien is refused admission to the United States, remains in the United States unlawfully after the expiration of his or her authorized period of temporary stay, or is removed or deported from the United States; and

(7) Submit daily to immigration officers any and all departure copies of Form I–94 received with respect to the departure from the United States of an alien admitted under section 217 of the Act and this part.

(c) *Termination of agreements.* The Commissioner, in behalf of the Attorney General, may terminate any carrier agreement under this part with five days notice to a carrier for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed fifteen days within which the carrier may bring itself into compliance with the terms of the carrier agreement.

PART 236—EXCLUSION OF ALIENS

6. The authority citation for Part 236 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1187, 1224, 1225, 1226, 1252, 1255, 1362.

7. In Part 236 a new § 236.9 is added to read as follow:

§ 236.9 Visa Waiver Pilot Program.

Pursuant to section 217 of the Act, an alien who applies for admission to the United States under the provisions of that section must waive any right to review or appeal an immigration officer's determination as to the admissibility of the alien at a port of entry, other than on the basis of an application for asylum. An alien applicant for admission under section 217 of the Act shall be removed from the United States upon a determination by an immigration officer that the alien is inadmissible, except that such an alien who applies for asylum in the United States shall be referred to an immigration judge for further inquiry as provided in section 235 of the Act and § 236.3 of this part.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES; APPREHENSION, CUSTODY, HEARING, AND APPEAL

8. The authority citation for Part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1187, 1252, 1254, 1362.

9. Section 242.1(a) is amended by inserting before the period at the end of the first sentence the following: ", except an alien who has been admitted to the United States under the provisions of section 217 of the Act and Part 217 of this chapter other than such an alien who has applied for asylum in the United States."

10. In § 242.1 a new paragraph (d) is added to read as follows:

§ 242.1 Order to show cause and notice of hearing.

* * * * *

(d) *Visa Waiver Pilot Program.* Pursuant to section 217 of the Act, an alien who has been admitted to the United States under the provisions of that section has waived any right to contest any action against him or her for deportation, other than on the basis of an application for asylum. An alien admitted to the United States under section 217 of the Act shall be taken into custody and removed from the United States upon a determination by an immigration officer that the alien is deportable, and without commencement of a proceeding under this part, except that such an alien who applies for asylum in the United States shall be brought into proceedings as otherwise provided in this part.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

11. The authority citation for Part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1159, 1182, 1187, 1255.

12. In § 245.1 a new paragraph (b)(12) is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(12) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and Part 217 of this chapter other than an immediate relative as defined in section 201(b) of the Act.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

13. The authority citation for Part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258.

14. In § 248.2 a new paragraph (f) is added to read as follows:

§ 248.2 Ineligible classes.

* * * * *

(f) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and Part 217 of this chapter.

PART 299—IMMIGRATION FORMS

15. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103.

16. Section 299.1 is amended by adding the following immediately before the entry "ICAO" in numerical sequence:

§ 299.1 Prescribed forms.

* * * * *

I–775 ( ) Agreement Between the Transportation Line and the United States under the Visa Waiver Pilot Program.

I–791 ( ) Visa Waiver Pilot Program Information Form.

Dated: May 4, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

Concurred in only 8 CFR 212.1(i).

Dated: May 4, 1988.

Joan M. Clark,

Assistant Secretary for Consular Affairs Department of State.

[FR Doc. 88–10536 Filed 5–11–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[SD–214]

VISAS; Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule establishes the United States Visa Waiver Pilot Program provided by section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, which added the pilot program as new section 217 of the Immigration and Nationality Act (hereinafter referred to as the Act). Under this program, the nonimmigrant visa requirement is waived for certain aliens applying for admission as nonimmigrant visitors for a period not to exceed ninety days.

DATE: Comments must be received no later than June 13, 1988.

ADDRESS: Written comments may be submitted in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Room 1330, SA–1, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: A. Roy Mackay, Deputy Chief, Legislation and Regulations Division, Visa Office, Washington, DC 20520 (202) 663–1205.

SUPPLEMENTARY INFORMATION: The United States Visa Waiver Pilot Program was established by Congress to determine if a visa waiver provision could facilitate international travel to the United States and promote the more effective use of the resources of affected government agencies while not posing a threat to the welfare, health, safety, or security of the United States. In furtherance of this aim this rule contains provisions designed to provide the basic authorization to facilitate travel, facilitate or reduce the work of affected agencies, and ensure that vital national interests are protected.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary visitors, Waivers.

In view of the foregoing, § 41.2 in Part 41 would be amended as follows:

PART 41—NONIMMIGRANT CLASSES—WAIVER OF PASSPORT AND/OR VISA REQUIREMENTS

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; sec. 313, 100 Stat. 3435, 8 U.S.C. 1187 and 1182.

2. A new paragraph (l) would be added at the end of § 41.2, to read:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) *Visa Waiver Pilot Program.* Notwithstanding the provisions of paragraphs (a) through (k) of this section, a visa is not required of any person who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant pursuant to the provisions of section 217 of the Act, if such a person is a citizen of a country designated as a participant in the Visa Waiver Pilot Program, who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure.

Date: April 27, 1988

Joan M. Clark,

Assistant Secretary for Consular Affairs.

Concurrence:

Date: May 4, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88-10482 Filed 5-11-88; 8:45 am]

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Federal Register

Thursday
May 12, 1988

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 361

The State Rehabilitation Services Program; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 361

The State Vocational Rehabilitation Services Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the State Vocational Rehabilitation Services Program. These amendments are needed to implement certain changes in Title I of the Rehabilitation Act of 1973, made by the Rehabilitation Act Amendments of 1986. The final regulations include revisions to existing State plan requirements, add new State plan requirements, and reflect changes in the fiscal administration of this program. In addition, the regulations include new or revised definitions, implement new requirements for client appeal procedures, and expand the services to be provided to individuals with handicaps.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48. Sections 361.2, 361.17, 361.18, 361.36, 361.39, 361.40, 361.41, and 361.48 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mark E. Shoob, Associate Commissioner, Office of Program Operations, Rehabilitation Services Administration, Room 3211, Mail Stop 2312, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202. Telephone (202) 732–1415 or TTY (202) 732–2848.

SUPPLEMENTARY INFORMATION: On November 18, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (52 FR 44366). A summary of the major provisions along with explanatory statements was included in the NPRM.

In addition to minor editorial and technical revisions, there are some major differences between the NPRM and these final regulations. The major differences are:

- The definition of an "impartial hearing officer" has been revised to require that the individual not have a personal or financial interest that would affect the individual's objectivity.
- The grounds for granting extensions of time during the formal appeals process are limited to two circumstances: joint request of the parties or good cause shown by a party.
- The definition of "initial expenditure" has been changed to require that reallotted funds be obligated by November 15 of the subsequent fiscal year.
- To be eligible to receive realloted funds a State must assure that it will be able to obligate fully all of its original allotment of funds by the end of the fiscal year for which the funds were appropriated.
- The definition of "extreme medical risk" has been revised to indicate that functional impairment may be increased, rather than caused, by delay in providing services.
- Determinations of "extreme medical risk" must be based upon medical evidence provided by an appropriate licensed medical professional.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 61 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the sections of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed. Comments that discussed provisions of Part 361 that were not included in the NPRM also have not been addressed.

Appeals Procedures, Section 361.48

Comments: The Secretary received a number of comments on the procedures in § 361.48 that revise the requirements for State appeals procedures if applicants or recipients request a review of State determinations regarding the furnishing or denial of services.

Some commenters stated that the length of time permitted for the appeals process is too long. Some commenters recommended shortening the time allowed for specific steps in the appeal process or including an expedited procedure for certain types of appeals. Some commenters also recommended that a provision be added requiring States to continue to provide disputed services during the appeal process. Some commenters were concerned that proposed § 361.48(b), which permits extensions of time at the request of a party, could result in lengthy delays in the appeals process. Some commenters recommended limiting the circumstances under which an extension would be granted. One commenter was concerned that the 45-day time period for a due process hearing would adversely affect a State's ability to resolve disagreements informally. Some commenters also felt that applicants and recipients should be given notice of the procedures in § 361.48.

Discussion: While the Secretary recognizes the concerns about the length of time for the appeals procedure, no change has been made in the specific timeframes included in § 361.48. These timeframes are either statutorily required or are based upon timeframes similar to those in effect in the State special education program. The Secretary agrees that a change should be made to the provision concerning extensions of time, which has been revised to permit extensions for good cause shown or at the request of both parties. The final regulations make clear that extensions of time can only occur in these two circumstances. Because extensions of time can only be granted at the request of a party, the hearing officer cannot unilaterally delay the formal appeal process.

The Secretary agrees that the regulations should be changed to inform applicants and clients of the rights and procedures available to them. He also agrees that the regulation should be revised to clarify that the informal review may not be used to delay any of the timeframes in § 361.48(c)(2). Of course, if the applicant or the client and the agency are involved in informal negotiations during any stage of a formal appeal under § 361.48(c), they can jointly request an extension of time, if they believe this is in their best interest.

Changes: Section 361.48 has been restructured to require in a new subsection (a) that applicants and clients be informed of their opportunities for appeal. The use of informal reviews, previously authorized in subsection (d), has been relocated to a new subsection (b), which makes it clear that such reviews cannot delay the formal appeal process unless both parties jointly agree to the delay. Formal appeal procedures are now contained in

subsection (c). The extension of time provisions are now located at subsection (d). The final regulations permit time extensions on two grounds only: At joint request of both parties or for good cause shown by a party. Regulatory provisions relating to the State fair hearing board and mandatory data collections are in subsections (e) and (f).

Definition of Impartial Hearing Officer, Section 361.1(c)(2)

Comments: A number of comments were received on the proposed definition of "impartial hearing officer." Most of the comments concerned the provision that precludes an employee of an agency involved in any decision regarding the furnishing or denial of rehabilitation services to a rehabilitation applicant or recipient from serving as a hearing officer. A number of commenters opposed the provision because they believed it would be difficult to find qualified individuals to serve as hearing officers if agency employees were excluded from consideration. Recognizing that this is a concern, some commenters made suggestions about how to recruit people with the knowledge and skills to serve as hearing officers who were not agency employees. A number of other commenters strongly supported excluding agency employees from serving as hearing officers. Several of these commenters were concerned that the proposed definition might permit agency contractors to serve as hearing officers. Some commenters were also concerned that former agency employees, particularly former agency directors, might be appointed as hearing officers. They expressed concern about whether former employees would be biased toward the position of the agency. Some commenters asked for further clarification of the provision that a hearing officer is not an employee solely because the hearing officer is paid by the agency for the purpose of conducting hearings.

Discussion: The Secretary believes the regulatory provision prohibiting agency employees from serving as hearing officers is a reasonable interpretation of the statutory requirement for impartiality and is consistent with the Rehabilitation Act Amendments of 1986 and the accompanying legislative history. Based upon the experience in the State special education programs, the Secretary also believes that a sufficient number of appropriately trained individuals who are not agency employees will be available to serve as hearing officers; therefore, no change has been made in this provision of the regulations. The Secretary also does not believe that further guidance is necessary on the provision that states that an individual is not an employee solely because the individual is paid by the agency to serve as a hearing officer. The Secretary agrees that agency contractors and, under certain circumstances, former employees may have a potential conflict of interest that could affect their ability to serve as an impartial hearing officer. Generally, contractors will have a personal or financial interest that will preclude them from serving as hearing officers.

Changes: The Secretary has changed subparagraph (iv) of the definition to clarify that individuals with a personal or financial interest that would conflict with their objectivity may not serve as a hearing officer.

"Rehabilitation Engineering", Sections 361.1, 361.32(c)

Comments: A number of commenters recommended that the Secretary expand the definition of rehabilitation engineering in § 361.1. A number of commenters recommended that the definition include lists of specific services. One commenter asked the Secretary to clarify what, if any, difference there is between "rehabilitation engineering" and "rehabilitation engineering services."

Some commenters requested that the Secretary specify that other professionals besides rehabilitation engineers could make appropriate assessments of the need for rehabilitation engineering services. They pointed out that, in some instances, these determinations are also made by occupational therapists. Some commenters also suggested that the evaluation requirements of § 361.32(c) specify that the evaluation is of the potential to benefit from rehabilitation engineering services.

Discussion: Although the Secretary believes that the definition of rehabilitation engineering provides sufficient guidance, the Secretary believes further guidance on the nature and purpose of the evaluation would add clarity to this requirement.

Changes: A change has been made to § 361.32(c) to require evaluations by "qualified personnel of the potential to benefit from rehabilitation engineering services."

Definitions, Section 361.1

Comments: Several commenters recommended changes in the definitions of "supported employment," "competitive work," and "on-going support services." To ensure consistency in the provision of supported employment services under the Title I program and the new State Supported Employment Services program under Title VI, Part C (final regulations for this program were published as 34 CFR Part 363 in the Federal Register on August 14, 1987, at 52 FR 30546), the proposed regulations incorporated in § 361.1(c)(2) the same definitions that were adopted in the supported employment program. The comments received in response to this regulation were very similar to the comments that were received in response to the Supported Employment NPRM and were discussed in the preamble to the final regulations for that program. Two commenters also asked what standards will be used to interpret "other gainful work" which is included in the definition of employability.

Discussion: The Secretary believes that it is essential to ensure consistency between the Title I program and the State Supported Employment Services program in interpreting these terms. Determinations of whether an activity is "other gainful work" will be made on a case-by-case basis.

Changes: No change has been made.

Public Participation in Formulation of State Plans, Section 361.18

Comments: Several commenters noted that sec. 101(a)(23)(A) of the Act requires the State plan to provide satisfactory assurances that "in the formulation of policies governing the provision of rehabilitation services," the State agency will conduct public meetings to allow interested groups and individuals to comment on the State plan. They recommended that § 361.18(a)(1) be revised to make clear that consultation must occur during policy development. Comments were also received recommending that § 361.18(a)(3) require a written description of other procedures for receiving comment and that this provision specifically require consultation with Client Assistance Programs (CAPs).

Discussion: The Secretary agrees that Congress intended to require public participation in the formulation of policy at the State plan stage and at subsequent stages. The Secretary also believes the regulations should require a written description of other procedures the State agency will use in obtaining and considering public comment on State plan and policy development. Because CAPs are clearly included as "others interested in vocational rehabilitation," the Secretary believes that they are already covered by

§ 361.18(c)(1)(iii); therefore, there is no need to include a specific requirement in the regulations to consult with the CAPs.

Changes: A change has been made to § 361.18(a)(1) specifically to include "formulation of" policies. In § 361.18(a)(3) "other methods" has been changed to "procedures."

Individualized Written Rehabilitation Program, Sections 361.40–361.41

Comments: A number of comments were received recommending changes to or clarification of the requirements for an individualized written rehabilitation program (IWRP). One commenter recommended that States be required to make the IWRPs available in taped form or in braille. Some commenters felt that a number of provisions concerning the need for post-employment services were unnecessary. The commenters recommended that only a post-employment assessment be completed and appropriate services be provided. One commenter recommended deleting the provision in § 361.40(a) requiring that suitable professional or informed advisors be included in the preparation of the IWRP. Some commenters asked for clarification on who designates these individuals. Apparently these commenters were concerned that this provision might be interpreted to permit the VR agency to select these individuals. Clarification was also requested by a number of commenters on the relationship between § 361.41(b)(1), which conditions time-limited supported employment services to no more than 18 months, and § 361.41(a)(13), which provides for post-employment services. One commenter recommended clarification in § 361.40(a) that the designated State unit staff member is the vocational rehabilitation counselor or coordinator. Some commenters also felt an absolute 18-month limitation on time-limited supported employment services and the 20 hour requirement in the definition of competitive work were inconsistent with the requirements of section 504 of the Rehabilitation Act which prohibits discrimination against persons with handicaps by the Federal Government and in programs or activities receiving Federal financial assistance.

Discussion: The provisions concerning post-employment services are based upon the statutory requirements and are necessary to implement those requirements. The provision requiring that suitable advisors or professionals be included in the development of the IWRP is clearly intended to permit the individual with handicaps, or the individual and a parent or guardian, to include suitable professionals or informed advisors that they have chosen.

The Secretary believes that the regulations provide sufficient guidance on the relationship of time-limited services and post-employment services. Individuals in supported employment will need post-employment services throughout the period of their employment. The use of time-limited services is intended to distinguish those short term services that are the responsibility of the VR agency from those on-going long term services that are the responsibility of other service systems. Post-employment services are intended to be occasional services needed by an individual with handicaps but are not intended to be of the intensity or duration of on-going supported employment services.

The Secretary believes that the definition of competitive work and the 18-month limitation on time-limited supported employment services are consistent with section 504 and that changes to these provisions are not required. In developing both the definition of competitive work and the 18-month limitation, the Secretary has provided considerable flexibility for adapting rehabilitation programs to meet the needs of eligible individuals. In addition, these requirements are consistent with the Rehabilitation Act Amendments of 1986 and the legislative history and were based upon available data from discretionary grant supported employment projects.

The Secretary agrees that § 361.40(a) should be clarified to make clear that the vocational rehabilitation counselor or coordinator is involved in the development of the IWRP.

Changes: Section 361.40(a) has been revised to specifically provide that the vocational rehabilitation counselor or coordinator must be involved in the development of the IWRP.

Comparable Services, Section 361.47

Comments: A number of comments were received recommending changes in § 361.47(b), which requires States to assure that, before vocational rehabilitation services are provided, a determination is made whether comparable benefits and services are available under any other programs. The proposed regulations provide for a number of exceptions to this requirement.

Some commenters asked for clarification of the effect of student aid programs on the comparable benefits provisions. One commenter asked if failure to file for student aid in a timely manner would result in a denial of rehabilitation services under the comparable benefits requirement.

Several commenters recommended changes in proposed § 361.47(b)(3), which provides that a determination of the availability of comparable benefits need not be made before services are provided, if a licensed medical professional decides that a delay in services resulting from the determination of the availability of comparable services would cause an individual with handicaps to be at extreme medical risk. Commenters recommended changes such as not requiring a determination prior to providing services if this would result in a delay in services. Another commenter recommended that the provision be revised to conform more closely to the statutory provision in the Rehabilitation Act Amendments. The commenter noted that the proposed provision appears to require that the delay in services be the cause of an extreme medical risk.

Discussion: The Secretary believes that the statutory standard should be followed in deciding whether services should be provided before a determination of the availability of comparable benefits has been made. The Secretary believes that the proposed regulations did not provide sufficient clarity about the "extreme medical risk" exception. The Secretary has determined that further guidance on the issues concerning student aid need not be included in the regulations. The Secretary will determine whether further policy guidance should be provided by the Department.

Changes: A change has been made in § 361.47(b)(3) to eliminate the apparent cause-and-effect relationship between delay in providing services and the individual being at extreme medical risk.

Reallotments, Section 361.87

Comments: Section 361.87 established procedures for the Secretary to reallot funds when a determination is made that one or more States will be unable to use all of the rehabilitation funds that have been allotted to them. A commenter recommended States be required to assure that they will be able to use additional funds to be eligible to receive reallotted funds.

Discussion: The Secretary believes that a requirement that States assure that they will be able to obligate all of their original allotment by the end of the fiscal year will help to ensure more effective distribution of reallotted funds. States that are unable to provide this assurance will not be eligible to receive reallotted funds.

Changes: A change has been made to § 361.87 to require that, to receive reallotted funds, States must assure that they will be able to obligate fully all of their initial allotment by the end of the fiscal year for which the funds were appropriated.

Order of Selection for Services, Section 361.2(b)(2)(iv)

Comments: Several commenters requested further clarification of § 361.2(b)(2)(iv) which requires the State Plan to include a description of and justification for the order to be used in selecting groups of individuals with handicaps to be provided vocational rehabilitation services if services cannot be provided to all eligible individuals. Section 361.36(b) also requires that individuals with the most severe handicaps be selected for services before other eligible individuals. Commenters were concerned that § 361.2(b)(2)(iv) might be interpreted to mean that individuals with certain types of handicapping conditions would be given priority, as a group, over individuals with other types of handicapping conditions.

Discussion: The Secretary agrees that the phrase "groups of" should be omitted for the reasons given by the commenters.

Changes: The phrase "groups of" has been omitted from § 361.2(b)(2)(iv).

Initial Expenditure, Section 361.1 (Section 361.87)

Comments: Several commenters expressed concern that the definition of an initial expenditure was unclear. Commenters expressed concern about the use of the term "first cash outlay" which they felt was not a commonly used term. Commenters also recommended that the definition use the term "obligation" because it is a more commonly used term.

Discussion: The Secretary agrees the term "initial expenditure" should be clarified and that the term "obligation" should be used instead of "first cash outlay". The definition of initial expenditure has been revised to require that reallotted funds be obligated no later than November 15 of the subsequent fiscal year.

Changes: Section 361.1 has been revised to define initial expenditures as obligations of reallocated funds made by November 15 of the subsequent fiscal year.

Extreme Medical Risk, Section 361.1 (Section 361.47(b)(3))

Comments: Several commenters expressed concern about the definition of extreme medical risk. Commenters were also concerned about the procedures for determining whether an individual is at extreme medical risk. Commenters expressed concern that the definition in the NPRM was much more restrictive than the statutory standard because it appears to require a causal relationship between delay in providing services and the adverse effects on the individual. A commenter was also concerned about whether all licensed medical professionals were the appropriate individuals to make assessments of extreme medical risk.

Discussion: The Secretary agrees that the definition of extreme medical risk in the NPRM is misleading and should be clarified.

Changes: Section 361.47(b)(3) has been revised to provide that a determination of extreme medical risk is based upon medical evidence provided by an appropriate licensed medical professional. The definition of "extreme medical risk" in § 361.1 has also been revised to reflect that functional impairment may be increased, rather than caused, by dalay in providing services.

Reassessment, Section 361.41(a)(7)

Comments: Some commenters recommended changing § 361.41(a)(7) to require that a reassessment of the need for post-employment services be completed prior to case closure. They consider § 361.41(a)(7) as proposed, which requires a schedule and procedure for reassessment, to be unnecessarily burdensome.

Discussion: The Secretary agrees that the changes proposed by the commenters clearly establish the obligation to perform an assessment prior to case closure without imposing unnecessarily burdensome requirements upon rehabilitation agencies.

Changes: Section 361.41(a)(7) has been changed to require a reassessment of the need for post-employment services prior to case closure rather than a procedure and schedule for reassessment.

Other Comments

Comments: Comments were received recommending that references in the NPRM to "recipients" be changed to "clients" because "client" is the term that is generally used in rehabilitation programs. Comments were also received recommending that references to "ANSI" and the "Developmental Disabilities Act of 1984" be revised to reflect that the ANSI standards have been superseded and the Developmental Disabilities Act was amended in 1987. Commenters also asked why the regulations did not include any provisions concerning the statement in the Conference Report that "Nothing in the Conference Report prohibits any individual from pursuing a private right of action". The same commenters asked why the data collection requirements concerning review of rehabilitation counselor or coordinator determinations had not been included.

Discussion: The Secretary agrees that the term client rather than recipient should be used in the regulations. The term client appears in other sections of the regulations and is generally used in rehabilitation programs. The Secretary also agrees that the changes should be made to the references to ANSI and the Developmental Disabilities Act of 1984, as amended. The Secretary believes that issues concerning the existence of a private action are issues that must be addressed by the courts and are not an appropriate subject for inclusion in these regulations. The data collection requirements are included in § 361.48(f).

Changes: The term recipient has been replaced by the term client in § 361.48 and references to ANSI have been revised to refer to the Uniform Accessibility Standards. The citations to the Developmental Disabilities Act of 1984, as amended, have also been revised.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 361

Administrative practice and procedure, Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Social security, Supplemental Security Income, Vocational rehabilitation.

Dated: March 18, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.126, State Vocational Rehabilitation Services Program)

The Secretary amends Part 361 of Title 34 of the Code of Federal Regulations as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

1. The authority citation for Part 361 is revised to read as follows:

Authority: 29 U.S.C. 711(c), unless otherwise noted.

2. In the table of contents and section headings for Part 361, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) Section 361.15;
(b) Section 361.53; and
(c) Section 361.75.

3. In the table of contents and section headings for Part 361, remove the words "severely handicapped individuals" and add, in their place, the words "individuals with severe handicaps" in the following places:

(a) Section 361.50; and
(b) Section 361.72.

4. In Part 361, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) Section 361.1(c)(2), definition of "Designated State unit", paragraph (i);
(b) Section 361.5(b)(1);
(c) Section 361.6(b)(1);
(d) Section 361.9(a)(5);
(e) Section 361.11(a);
(f) Section 361.12(a);
(g) Section 361.15(b);
(h) Section 361.19 (a) and (b);
(i) Section 361.22;
(j) Section 361.36(c);
(k) Section 361.37;
(l) Section 361.42(a)(6);
(m) Section 361.47(a)(2);
(n) Section 361.51 (c) and (e);
(o) Section 361.52 (c) and (g);
(p) Section 361.54;
(q) Section 361.55;
(r) Section 361.57;
(s) Section 361.58;
(t) Section 361.71 (a) and (c);
(u) Section 361.75;
(v) Section 361.150(b); and
(w) Section 361.151 (c) and (h).

5. In Part 361, remove the words "handicapped individual" and add, in their place, the words "individual with handicaps" in the following places:

(a) Section 361.1(c)(2), definitions of "Family member" following the phrase "with whom the"; and "Vocational rehabilitation services" when provided for the benefit of groups of individuals, paragraph (iv);
(b) Section 361.13(a)(3);
(c) Section 361.31(a)(1);
(d) Section 361.39 (f), (h), and (j);
(e) Section 361.40(d), the first time it appears;
(f) Section 361.42(a)(7);
(g) Section 361.53;
(h) Section 361.71(c); and
(i) Section 361.75.

6. In Part 361, remove the words "a handicapped individual" and add, in their place, the words "an individual with handicaps" in the following places:

(a) Section 361.1(c)(2), definition of "Family member;"
(b) Section 361.34(b);
(c) Section 361.35(a);
(d) Section 361.40(d);
(e) Section 361.47(a); and
(f) Section 361.71(a).

7. In Part 361, remove the words "severely handicapped individuals" and add, in their place, the words "individuals with severe handicaps" in the following places:

(a) Section 361.1(c)(2), definition of "Vocational rehabilitation services" when provided for the benefit of groups of individuals, paragraph (i);
(b) Section 361.14(a);
(c) Section 361.50 (a) and (b)(5);
(d) Section 361.72(a); and
(e) Section 361.155.

8. In Part 361, remove the words "his or her" and add, in their place, the words "the individual's" in the following places:

(a) Section 361.40 (d)(1) and (d)(3); and
(b) Section 361.71(a).

9. In § 361.1, paragraphs (b)(1) and (c)(2) introductory text are revised and the definitions in paragraph (c)(2) are amended by adding definitions of "Competitive work," "Extreme medical risk," "Impartial hearing officer," "Indian tribe," two definitions of "Individual with handicaps," "Individual with severe handicaps," "Initial expenditure," "Integrated work setting," "On-going support services," "Rehabilitation engineering," "Supported employment," and "Transitional employment for individuals with chronic mental illness" in alphabetical order; removing the definitions of "Secretary," both definitions of "Handicapped individual," and "Severely handicapped individual"; and revising the definitions of "Employability," "Evaluation of vocational rehabilitation potential," paragraphs (iii) and (v), "Local agency," "Rehabilitation facility," introductory text and paragraphs (vi) and (xi)–(xiv), and "Substantial handicap to employment," to read as follows:

§ 361.1 The State vocational rehabilitation services program.

* * * * *

(b) * * *

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) except for hearings under Subpart G of Part 361, and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(c) * * *

(2) The following definitions also apply to this Part 361:

* * * * *

"Competitive work," as used in the definition of "Supported employment," means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period, and for which an individual is compensated in accordance with the Fair Labor Standards Act.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

* * * * *

"Employability" means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, or if appropriate, part-time employment, consistent with the capacities or abilities of the individual in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; home-based employment; supported employment; or other gainful work.

(Authority: Sec. 7(6) of the Act; 29 U.S.C. 706(6))

* * * * *

"Evaluation of vocational rehabilitation potential."

* * * * *

(iii) Any other goods or services, including rehabilitation engineering services, necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational

rehabilitation services in terms of employability;

* * * * *

(v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is an individual with handicaps for whom a vocational goal is feasible.

(Authority: Sec. 7(5) of the Act; 29 U.S.C. 706(5))

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditously.

(Authority: Sec. 101(a)(8) of the Act; 29 U.S.C. 721(a)(8))

* * * * *

"Impartial hearing officer" means an individual—

(i) Who is not an employee of a public agency that is involved in any decision regarding the furnishing or denial of rehabilitation services to a vocational rehabilitation applicant or client. An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer;

(ii) Who has not been involved in previous decisions regarding the vocational rehabilitation applicant or client;

(iii) Who has background and experience in, and knowledge of, the delivery of vocational rehabilitation services; and

(iv) Who has no personal or financial interest that would be in conflict with the individual's objectivity.

(Authority: Sec. 102(d) of the Act; 29 U.S.C. 722(d))

"Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Sec. 7(21) of the Act; 29 U.S.C. 706(21))

"Individual with handicaps," except in §§ 361.15(b), 361.51(e), and 361.52(g) means an individual—

(i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether the individual might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

"Individual with handicaps," for purposes of §§ 361.15(b), 361.51(e), and 361.52(g), means an individual—

(i) Who has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Sec. 7(8)(B) of the Act; 29 U.S.C. 706(8)(B))

"Individual with severe handicaps" means an individual with handicaps—

(i) Who has a severe physical or mental disability that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, inter-personal skills, work tolerance, or work skills) in terms of employability;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Authority: Sec. 7(15) of the Act; 29 U.S.C. 708(15))

"Initial expenditure," as applied to the use of reallotted funds, means obligations incurred by November 15 of the fiscal year subsequent to the fiscal year from which the funds were reallotted.

(Authority: Sec. 110(c)(2) of the Act; 29 U.S.C. 730(c)(2))

"Integrated work setting," as used in the definition of "Supported employment," means job sites where—

(i)(A) Most co-workers are not handicapped; and

(B) Individuals with handicaps are not part of a work group of other individuals with handicaps; or

(ii)(A) Most co-workers are not handicapped; and

(B) If a job site described in paragraph (i)(B) of this definition is not possible, individuals with handicaps are part of a small work group of not more than eight individuals with handicaps; or

(iii) If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

"Local agency" means an agency of a unit of general local government or of an Indian tribe (or combination of those units or tribes) that has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Authority: Sec. 7(9) of the Act; 29 U.S.C. 706(9))

"On-going support services," as used in the definition of "Supported employment," means continuous or periodic job skill training services provided at least twice monthly at the work site throughout the term of employment to enable the individual to perform the work. The term also includes other support services provided at or away from the work site, such as transportation, personal care services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

* * * * *

"Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

(Authority: Sec. 7(12) of the Act; 29 U.S.C. 706(12))

"Rehabilitation facility" means a facility that is operated for the primary purpose of providing vocational

rehabilitation services to individuals with handicaps and that provides singly or in combination one or more of the following services to individuals with handicaps:

* * * * *

(vi) Psychiatric, psychological and social services;

* * * * *

(xi) Orientation and mobility services and other adjustment services to blind individuals;

(xii) Transitional or extended employment for those individuals with handicaps who cannot be readily absorbed in the competitive labor market;

(xiii) Psychosocial rehabilitation services for individuals with chronic mental illness; and

(xiv) Rehabilitation engineering services.

(Authority: Sec. 7(13) of the Act; 29 U.S.C. 706(13))

* * * * *

"Substantial handicap to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

(Authority: Secs. 7(7)(A)(i) and 12(c) of the Act; 29 U.S.C. 706(7)(A)(i) and 711(c))

"Supported employment" means—

(i) Competitive work in an integrated work setting with on-going support services for individuals with severe handicaps for whom competitive employment—

(A) Has not traditionally occurred; or

(B) Has been interrupted or intermittent as a result of severe handicaps; or

(ii) Transitional employment for individuals with chronic mental illness.

"Transitional employment for individuals with chronic mental illness," as used in the definition of "Supported employment," means competitive work in an integrated work setting for individuals with chronic mental illness who may need support services (but not necessarily job skills training services) provided either at the work site or away from the work site to perform the work. The job placement may not necessarily be a permanent employment outcome for the individual.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

* * * * *

10. In § 361.2, paragraphs (b)(1) and (b)(2)(ii)–(v) are revised and a new paragraph (b)(2)(vi) is added to read as follows:

§ 361.2 The State plan: General requirements.

* * * * *

(b) * * *

(1) A part providing detailed commitments specified by the Secretary that must be amended or reaffirmed every three years, including—

(i) A description of how rehabilitation engineering services will be provided to assist an increasing number of individuals with handicaps;

(ii) A summary of the results of a comprehensive, Statewide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment; and

(iii) An acceptable plan under 34 CFR Part 363.

(2) * * *

(ii) Estimates of the number of individuals with handicaps who will be served with funds provided under the Act;

(iii) A description of the methods used to expand and improve services to those individuals who have the most severe handicaps, including individuals served under 34 CFR Part 363;

(iv) A justification for and description of the order of selection (§ 361.36) of individuals with handicaps to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible individuals with handicaps who apply);

(v) A description of the outcome and service goals to be achieved for individuals with handicaps in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan, that are measurable in terms of service expansion or program improvement in specified program areas, and that the State unit plans to achieve during a specified period of time; and

(vi) A description of the plans, policies, and methods to be followed to assist in the transition from education to employment-related activities, including a summary of the previous year's activities and accomplishments.

* * * * *

11. In § 361.2(d), in the next-to-last sentence, remove ", and be administered in accordance with, this Act and the Developmental Disabilities Assistance and Bill of Rights Act." and add, in its place, "and be administered in accordance with this Act and the Developmental Disabilities Assistance and Bill of Rights Act, as amended."

12. In § 361.17, paragraphs (a), (b) introductory text and (b)(1) are revised to read as follows:

§ 361.17 State studies and evaluations.

(a) *General provisions.* The State plan must assure that the State unit conducts continuing Statewide studies of the needs of individuals with handicaps within the State, including a full needs assessment for serving individuals with severe handicaps; the State's need for rehabilitation facilities; and the methods by which these needs may be most effectively met.

(b) *Scope of Statewide studies.* The continuing Statewide studies must—

(1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of individuals with handicaps, including utilizing data provided by State special education agencies under section 618(b)(3) of the Education of the Handicapped Act, with special reference to the need for expanding services to individuals with the most severe handicaps;

* * * * *

13. Section 361.18 is revised to read as follows:

§ 361.18 State plan and other policy development consultation.

(a) *Public participation in State plan development.* (1) The State plan must assure that the State unit conducts public meetings throughout the State, after appropriate and sufficient notice, to allow interested groups, organizations and individuals an opportunity to comment on the State plan and to participate in the formulation of policies governing the provision of vocational rehabilitation services within the State.

(2) The State plan must include a summary of the public comments and the State unit's response to those comments.

(3) The State plan must further assure that the State unit establishes and maintains a written description of procedures used to obtain and consider views on State plan development and policy development and implementation.

(b) *Consultation with Indian tribes.* The State plan must further assure that, as appropriate, the State unit actively consults in the development of the State plan with those Indian tribes and tribal organizations and native Hawaiian organizations that represent significant numbers of individuals with handicaps within the State.

(c) *Other consultations.* (1) The State plan must further assure that the State unit seeks and takes into account, in connection with matters of general policy development and implementation arising in the administration of the State plan, the views of—

(i) Current or former clients of vocational rehabilitation services or, as appropriate, their parents, guardians or other representatives;

(ii) Providers of vocational rehabilitation services; and

(iii) Others interested in vocational rehabilitation.

(2) Matters of general policy development and implementation include, but are not limited to—

(i) Program planning, development, and evaluation;

(ii) Development of legislative and budgetary proposals;

(iii) Assessing research and services proposals;

(iv) Affirmative action for employment of qualified individuals with handicaps; and

(v) Development of procedures for review of rehabilitation counselor or coordinator determinations.

(d) *Public access.* The State plan must further assure the State unit will make available to the public for review and inspection a report of activities undertaken in the area of State plan and policy development as well as a summary of comments submitted at the scheduled public meetings and the State unit's response to these comments.

(Authority: Secs. 101(a)(18) and 101(a)(23) of the Act; 29 U.S.C. 721(a)(18) and 721(a)(23))

14. In § 361.20, paragraph (a) is revised to read as follows:

§ 361.20 Establishment and maintenance of information and referral resources.

(a) *General provisions.* The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that individuals with handicaps within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs that assist individuals with handicaps, including client assistance programs. The State plan must also assure that the State unit will refer individuals with handicaps to other appropriate Federal and State programs that might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.

* * * * *

15. A new § 361.25 is added to read as follows:

§ 361.25 State-imposed requirements.

The designated State unit shall identify as a State-imposed requirement any State rule or policy relating to its administration or operation of programs under the Act, including any rule or policy based on interpretation of any Federal law, regulation, or guideline.

(Authority: Sec. 17 of the Act; 29 U.S.C. 716)

16. The authority citation for § 361.30 is revised to read as follows:

(Authority: Sec. 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.32 [Amended]

17. Remove the period at the end of the first sentence of § 361.32(c) and add, in its place, ", and, as appropriate, evaluations by qualified personnel of the potential to benefit from rehabilitation engineering services.".

§ 361.33 [Amended]

18. In the second sentence of § 361.33(a), add "recreational," after "educational,".

19. In the first sentence of § 361.33(b), add "employability," after "individual's".

20. At the end of the last sentence in § 361.33(b), remove the period, and add, in its place, ", and the need for rehabilitation engineering services.".

§ 361.34 [Amended]

21. In § 361.34, in paragraph (c)(1), remove the word "handicapped" in the third sentence, and in paragraph (e)(1) and paragraph (e)(2) remove the words "he or she" and add, in their place, the words "the individual".

§ 361.35 [Amended]

22. In § 361.35(c)(2), remove the words "his or her" wherever they appear and add, in their place, the words "the individual's"; in the second sentence remove the words "he or she" and add, in their place, the words "the individual"; at the end of the second sentence remove the words "administrative review and fair hearings" and add, in their place, "review of rehabilitation counselor or coordinator determinations"; and at the beginning of the third sentence remove the words "When appropriate, the" and add, in their place, the word "The".

23. In § 361.35(d), remove the words "he or she" and add, in their place, the words "the individual", and in § 361.35 (d) and (e) remove the words "his or her" wherever they appear and add, in their place, the words "the individual's".

24. Section 361.36 is amended by revising paragraphs (a) and (b) to read as follows:

§ 361.36 Order of selection for services.

(a) *General provisions.* The State plan must include and explain the justification for the order to be followed in selecting individuals with handicaps to be provided vocational rehabilitation services if services cannot be provided to all eligible individuals who apply.

(b) *Priority for individuals with severe handicaps.* The State plan must assure that those individuals with the most severe handicaps are selected for service before other individuals with handicaps.

* * * * *

(Authority: Sec. 101(a)(5)(A) of the Act; 29 U.S.C. 721(a)(5)(A))

25. Section 361.38 is revised to read as follows:

§ 361.38 Services to handicapped American Indians.

The State plan must assure that vocational rehabilitation services are provided to American Indians with handicaps residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services, including, as appropriate, services traditionally used by Indian tribes, to American Indians with handicaps on reservations eligible for services by a special tribal program under section 130 of the Act.

(Authority: Secs. 101(a)(20) and 130 of the Act; 29 U.S.C. 721(a)(20) and 750)

26. Section 361.39 is amended by revising paragraphs (c) and (m) to read as follows:

§ 361.39 The case record for the individual.

* * * * *

(c) Documentation supporting any determination that the individual's handicaps are severe;

* * * * *

(m) Documentation concerning any action and decision involving the request by the individual with handicaps for review of rehabilitation counselor or coordinator determinations under § 361.48; and

* * * * *

27. In § 361.40, paragraphs (a) and (c) and the authority citation are revised to read as follows:

§ 361.40 The individualized written rehabilitation program: Procedures.

(a) *General provisions.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the vocational rehabilitation counselor or coordinator and the individual with handicaps or, as appropriate, that individual and a parent, guardian or other representative, including other suitable professional and informed advisors. The State unit must provide a copy of the written program, and any amendments, to the individual with handicaps or, as appropriate, that individual and a parent, guardian, or other representative and must advise each individual with handicaps or that individual's representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.

* * * * *

(c) *Review.* The State must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis. Each individual with handicaps or, as appropriate, that individual's parent, guardian, or other representative, must be given an opportunity to review the program and, if necessary, jointly redevelop and agree to its terms.

* * * * *

(Authority: Secs. 101(a)(9) and 102 of the Act; 29 U.S.C. 721(a)(9) and 722)

28. Section 361.41 is amended by revising paragraph (a) and the authority citation following the section, redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 361.41 The individualized written rehabilitation program: Content.

(a) *Scope of content.* The State plan must assure that each individualized written rehabilitation program is based on a determination of employability designed to achieve the vocational objective of the individual and is developed through assessments of the individual's particular rehabilitation needs. Each individualized written rehabilitation program must, as appropriate, include but not be limited to, statements concerning—

(1) The basis on which a determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

(2) The long-range and intermediate rehabilitation objectives established for the individual based on an assessment determined through an evaluation of rehabilitation potential;

(3) The specific rehabilitation services to be provided to achieve the established rehabilitation objectives including, if appropriate, rehabilitation engineering services;

(4) An assessment of the expected need for post-employment services;

(5) The projected dates for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

(6) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

(7) A reassessment, prior to case closure, of the need for post-employment services;

(8) The views of the individual with handicaps, or as appropriate, that individual and a parent, guardian, or other representative, including other suitable professional and informed advisors, concerning the individual's goals and objectives and the vocational rehabilitation services being provided;

(9) The terms and conditions for the provision of vocational rehabilitation services, including responsibilities of the individual with handicaps in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services, if any, and the extent to which comparable services and benefits are available to the individual under any other program;

(10) An assurance that the individual with handicaps has been informed of that individual's rights and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations under § 361.48;

(11) An assurance that the individual with handicaps has been provided a description of the availability of a client assistance program established under section 112 of the Act;

(12) The basis on which the individual has been determined to be rehabilitated under § 361.43; and

(13) The plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which those plans are developed; and, if appropriate for individuals with severe handicaps, a statement of how these services will be provided or arranged through cooperative agreements with other service providers.

(b) *Supported employment placements.* Each individualized written rehabilitation program must also contain, for individuals with severe handicaps for whom a vocational objective of supported employment has been determined to be appropriate—

(1) A description of the time-limited services, not to exceed 18 months in duration, to be provided by the State unit; and

(2) A description of the extended services needed, an identification of the State, Federal, or private programs that will provide the continuing support, and a description of the basis for determining that continuing support is available in accordance with 34 CFR 363.11(e)(2).

* * * * *

(Authority: Secs. 101 (a)(9), (a)(11), 102 and 634(a) of the Act; 29 U.S.C. 721 (a)(9), (a)(11), 722, and 795m)

29. Section 361.42 is amended by revising paragraphs (a)(2) and (a)(13), removing the words "a handicapped" from paragraph (a)(5) and adding, in their place, the word "that", removing "and" at the end of paragraph (a)(14), redesignating paragraph (a)(15) as (a)(16), adding a new paragraph (a)(15), and revising redesignated paragraph (a)(16) to read as follows:

§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

(a) * * *

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout the program of services for an individual with handicaps, referral necessary to help individuals with handicaps secure needed services from other agencies, and advising clients and client applicants about client assistance programs under 34 CFR Part 370.

* * * * *

(13) Post-employment services necessary to maintain or regain other suitable employment;

* * * * *

(15) Rehabilitation engineering services; and

(16) Other goods and services that can reasonably be expected to benefit an

individual with handicaps in terms of employability.

* * * * *

30. In § 361.43, paragraph (b) and the authority citation are revised to read as follows:

§ 361.43 Individuals determined to be rehabilitated.

* * * * *

(b) *Post-employment services.* The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services if necessary to assist an individual to maintain or regain other suitable employment.

(Authority: Secs. 12(c), 101(a)(6) and 103(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 723(a)(2))

31. Section 361.45 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 361.45 Standards for facilities and providers of services.

* * * * *

(b) * * * State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards, and their implementing standards in 41 CFR Part 101–19.6 *et seq.*, and the American National Standards Institute, No. A117.1–1986.

* * * * *

32. Section 361.47 is amended by revising the section heading and paragraph (b) to read as follows:

§ 361.47 Financial need; determination of the availability of comparable services and benefits.

* * * * *

(b) *Availability of comparable services and benefits.* (1) The State plan must assure that before the State unit provides any vocational rehabilitation services, except those services enumerated in paragraph (b)(2) of this section, to an individual with handicaps, or to members of that individual's family, it determines whether comparable services and benefits are available under any other program.

(2) The requirements of paragraph (b)(1) of this section do not apply to the following services:

(i) Evaluation of rehabilitation potential.

(ii) Counseling, guidance, and referral.

(iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, that are not provided in institutions of higher education (§ 361.42(a)(4)).

(iv) Placement.

(v) Rehabilitation engineering services.

(vi) Post-employment services consisting of the services listed under paragraphs (b)(2)(i)–(v) of this section.

(3) The requirements of paragraph (b)(1) of this section also do not apply if the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual with handicaps who is at extreme medical risk. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional.

(4) The State plan must assure also that if comparable services and benefits are available, they must be utilized to meet, in whole or in part, the cost of vocational rehabilitation services.

(Authority: Secs. 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

33. Section 361.48 is revised to read as follows:

§ 361.48 Review of rehabilitation counselor or coordinator determinations.

(a) *Informing affected individuals.* All applicants and clients must be informed of the opportunities available under this section, including the names and addresses of individuals with whom appeals may be filed.

(b) *Informal reviews.* States may continue to use an informal administrative review process if it is likely to result in a timely resolution of disagreements in particular instances, but this process may not be used as a means to delay a more formal hearing before an impartial hearing officer unless the parties jointly agree to a delay.

(c) *Formal appeals procedures.* (1) Except as provided in paragraph (e) of this section, the State plan must assure that procedures are established by the Director of the designated State unit so that any applicant for or client of vocational rehabilitation services who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request a timely review of those determinations.

(2) At a minimum each State's formal review procedures must provide that—

(i) A hearing by an impartial hearing officer is held within 45 days of a request by the applicant or client;

(ii) The applicant or client or, if appropriate, the individual's parent, guardian, or other representative, is afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;

(iii) The impartial hearing officer makes a decision based on the provisions of the approved State plan and the Act and provides to the applicant or client or, if appropriate, the individual's parent, guardian, or other representative, and to the Director of the designated State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing;

(iv) If the Director of the designated State unit decides to review the decision of the impartial hearing officer, the Director shall notify in writing the applicant or client or, if appropriate, the individual's parent, guardian, or other representative, of that intent within 20 days of the mailing of the impartial hearing officer's decision;

(v) If the Director of the designated State unit fails to provide the notice required by paragraph (c)(2)(iv) of this section, the impartial hearing officer's decision becomes a final decision;

(vi) The decision of the Director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;

(vii) If the Director of the designated State unit decides to review the decision of the impartial hearing officer, the applicant or client, or, if appropriate, the individual's parent, guardian, or other representative, is provided an opportunity for the submission of additional evidence and information relevant to the final decision;

(viii) Within 30 days of providing notice of intent to review the impartial hearing officer's decision, the Director of the designated State unit makes a final decision and provides a full report in writing of the decision, and of the findings and grounds for the decision, to the applicant or client, or, if appropriate, the individual's parent, guardian, or other representative; and

(ix) The Director of the designated State unit cannot delegate responsibility to make any final decision to any other officer or employee of the designated State unit.

(d) *Extensions of time.* Except for the time limitation established in paragraph (c)(2)(iv) of this section, each State's review procedures may provide for reasonable time extensions for good

cause shown at the request of a party or at the request of both parties.

(e) *State fair hearing board.* The provisions of paragraphs (c) and (d) of this section are not applicable if there is in any State a fair hearing board that was established before January 1, 1985, that is authorized under State law to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the Director of the designated State unit under this section.

(f) *Data collection.* The Director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(1) A description of State procedures for review of rehabilitation counselor or coordinator determinations.

(2) The number of appeals to impartial hearing officers and the State Director, including the type of complaints and the issues involved.

(3) The number of decisions by the State Director reversing in whole or in part a decision of the impartial hearing officer.

(4) The number of decisions affirming the position of the dissatisfied vocational rehabilitation applicant or client assisted through the client assistance program.

(Authority: Secs. 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d))

34. In § 361.49, remove "(Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))" at the end of paragraph (e)(4), remove paragraph (f), and add an authority citation at the end of the section to read as follows:

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.71 [Amended]

35. In § 361.71(b), remove the words "a handicapped" and add, in their place, the word "the".

§ 361.72 [Amended]

36. In § 361.72(b), remove the words "most severely handicapped individuals" and add, in their place, the words "individuals with the most severe handicaps".

§ 361.73 [Amended]

37. In § 361.73(c), remove "80 percent" and add, in its place, "the applicable Federal share in accordance with § 361.86".

38. Section 361.85 is amended by removing paragraph (d); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by adding a new paragraph (b); and by revising the authority citation to read as follows:

§ 361.85 Allotment of Federal funds for vocational rehabilitation services.

* * * * *

(b) For fiscal year 1987 and for each subsequent fiscal year, the Secretary reserves, from the amount appropriated for grants under section 100(b)(1), not less than one quarter of one percent and not more than one percent to carry out Part D of Title I of the Act.

* * * * *

(Authority: Secs. 12(c) and 110 of the Act; 29 U.S.C. 711(c) and 730)

39. Section 361.86 is revised to read as follows:

§ 361.86 Payments from allotments for vocational rehabilitation services.

(a) Except as provided in § 361.85(d), the Secretary pays to each State an amount computed in accordance with the requirements of section 111 of the Act. For fiscal years 1987 and 1988, the Federal share for each State is 80 percent (except for the cost of construction of rehabilitation facilities). Beginning in fiscal year 1989, the Federal share for each State decreases by one percent per year for five years for funds received in excess of the amount received in fiscal year 1988. The Federal share of these excess payments is 79 percent in fiscal year 1989; 78 percent in fiscal year 1990; 77 percent in fiscal year 1991; 76 percent in fiscal year 1992; and 75 percent in fiscal year 1993 (except for the cost of construction of rehabilitation facilities).

(b)(1) Amounts otherwise payable to a State under this section for any fiscal year are reduced by the amount (if any) by which expenditures from non-Federal sources, as specified in § 361.76 (except for expenditures with respect to which the State is entitled to payments under Subpart F of this part), for that fiscal year under the State's approved plan for vocational rehabilitation services are less than expenditures under the plan for the average of the total of those expenditures for the three preceding fiscal years.

(2) The Secretary may waive or modify any requirement or limitation in section 111(a)(2) (A) and (B) of the Act, if the Secretary determines that a waiver or modification of the State maintenance of effort requirement is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that cause significant unanticipated expenditures or reductions in revenue and result in a general reduction of programs within the State. A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(3) If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for blind individuals, and the rest of the plan, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan for the average of the total of those expenditures for the three preceding fiscal years.

(Authority: Secs. 7(7), 12(c) and 111 of the Act; 29 U.S.C. 706(7), 711(c), and 731)

§§ 361.88 through 361.92 [Redesignated from §§ 361.87 through 361.91]

40. Sections 361.87 through 361.91 are redesignated as §§ 361.88 through 361.92, respectively, and a new § 361.87 is added to read as follows:

§ 361.87 Reallotment.

(a) The Secretary makes a determination as to what States (if any) will not use their full allotment not later than 45 days before the end of a fiscal year.

(b) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the fiscal year, or to pay for initial expenditures during the subsequent fiscal year. To receive reallotted funds, a State must assure that it will be able to obligate fully all of its original allotment within the fiscal year for which the funds were appropriated. Funds reallotted to another State are considered to be an increase to that State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sec. 110(c)(1) of the Act; 29 U.S.C. 730)

[FR Doc. 88-10553 Filed 5-11-88; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Thursday
May 12, 1988

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 173 and 177

Radioactive Materials; State Designations of Alternative Routes and Route Plans; Final Rules

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 177

[Docket No. HM-164A]

State Designations of Alternative Routes for Radioactive Materials Transportation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to amend 49 CFR 177.825 to provide that State designations, of alternative routes for the transportation of highway route controlled quantity (HRCQ) shipments of radioactive material, become effective only upon notice to RSPA of such designations and to clarify the methods that States are authorized to use in selecting preferred routes. The creation of a repository for route designations within RSPA will provide shippers, carriers, enforcement and emergency response personnel, State agencies, local governments, and RSPA with definitive information concerning the existence of those alternative routes.

EFFECTIVE DATE: September 9, 1988.

FOR FURTHER INFORMATION CONTACT: John A. Gale, Office of Hazardous Materials Transportation, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590 (202-366-4488).

SUPPLEMENTARY INFORMATION: On July 16, 1987, RSPA published Notice No. 87-9 (52 FR 26928) under Docket HM-164A which proposed to amend 49 CFR 177.825 to provide that State designations of alternative routes for the transportation of HRCQ shipments of radioactive materials become effective upon written notice of such designations to RSPA. In addition, RSPA proposed to clarify the procedures that States are authorized to use in designating alternative routes. Presently, the definition of "State-designated route" in § 171.8 contains the statement "* * * or an equivalent routing analysis which adequately considers overall risk to the public." However, § 177.825(b)(1)(ii), in describing a State-designated route, fails to mention "an equivalent routing analysis." To clarify this incongruity, RSPA placed the language that currently exists in the definition of "State-designated route" into the proposed § 177.825(b)(1)(ii).

RSPA received twelve comments to HM-164A, all of which supported the proposed changes. However, six of these commenters requested that additional provisions be added to the rule. For the reasons disclosed in this document, RSPA denies these requests and adopts HM-164A essentially as proposed.

Two commenters requested that RSPA periodically publish in the **Federal Register** a listing of the States that have notified RSPA of alternative preferred route designations, the routes designated, the appropriate contact person in each such State, and any State modifications or revocations of alternative preferred routes since the last publication. RSPA understands the need for readily available and accurate information concerning route designations. However, periodic **Federal Register** publication will not ensure the immediate availability of accurate information. Instead, RSPA's Dockets Unit will respond to requests for information concerning precisely which alternative preferred route designations are in effect at any time. In summary, RSPA will be maintaining a "real-time" system and making the information therein available on a "real-time" basis.

One commenter suggested that States submit their designation on particular days of the year (e.g., first days of the month). RSPA believes it is the prerogative of each State to change its routes when a safety need arises and, therefore, States should not be required to submit their designations on particular days of the year.

The National Transportation Safety Board (NTSB) suggested that this rule should encompass routes that are designated for any hazardous material, not just HRCQ of radioactive materials. This recommendation is beyond the scope of this rulemaking and, therefore, no action is taken on it in this final rule. However, RSPA intends to address routing requirements for certain hazardous materials in a forthcoming rulemaking action.

The Iowa Department of Transportation (IODOT) had two concerns about the proposed rule and the present regulations. First, IODOT stated that the regulations for routing designations should be "reworded to clarify" States' authority to designate preferred routes. IODOT expressed the belief that when two interstate highways of equal risk exist, the State is unable to designate one route in lieu of the other under the procedures for designating routes. RSPA disagrees with this interpretation of the current regulations. States have the authority under § 177.825(b)(1) to designate routes *in lieu of* an interstate highway as an alternative route. Therefore, so long as the requirements of § 177.825(b)(1)(ii) are met, States are authorized to designate one of two interstate routes of equal risk as an alternative route which must be used in lieu of the other. Consequently, RSPA deems unnecessary IODOT's request to reword this rule to provide clarification of States' authority to designate preferred routes.

In addition, IODOT contended that the system RSPA proposes for effecting State route designations is unresponsive to emergency situations (e.g., unforeseen road construction). RSPA believes that such situations should not present a problem because § 177.825(b)(2) authorizes deviations from preferred routes for emergency conditions that would make continued use of the preferred route unsafe.

The Yankee Atomic Electric Company recommended that RSPA require any State, which uses an approach other than the DOT Guidelines for selecting routes, to prove equivalency of its method to that of the DOT Guidelines. This comment relates to the proposal in the NPRM to amend § 177.825 to authorize States to use an "equivalent" routing analysis. That proposal constitutes a mere editorial change to the regulations. The language proposed for § 177.825 is equivalent to that which currently exists in the definition of a "State-designated route" in § 171.8. Thus, no substantive rule change is occurring. RSPA believes that the recommendation to require proof of equivalency for selection methods is beyond the scope of this rulemaking.

The Northeast Ohio Areawide Coordinating Agency (NOACA) recommended that RSPA spell out an "obligatory method of substantive State consultation with local jurisdictions." In the original HM-164 final rule published on January 19, 1981 (46 FR 5296), RSPA thoroughly addressed this issue. In fact, the regulations currently require consultations with affected local jurisdictions (and other affected States) as prerequisites to designations of alternative routes. RSPA does not believe that there is any need for it to specify procedures which must be used in consultations between States and local jurisdictions. The action described in the next paragraph may alleviate any perceived problems in this area.

Except for a minor editorial change to § 177.825, RSPA is adopting the proposed rule unchanged. The second sentence of the definition of "State-designated route" in § 171.8 contains the substantive consultation requirements described above; substantive requirements are inappropriate for a "definitions" section. Therefore, RSPA is removing the sentence from the "definitions" section and placing it in

the new § 177.825(b)(1)(ii). RSPA believes that this will facilitate a better understanding of the requirements for State consultation with affected jurisdictions prior to designating alternative routes.

Administrative Notices

RSPA has determined that this final rule: (1) Is not a "major rule" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not adversely affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). Although this regulation requires State notification to RSPA as a prerequisite to designation of alternative preferred routes, it has no substantial direct effects on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612.

Paperwork Reduction Act

Information collection requirements contained in § 177.825 herein, pertaining to requirements for designating alternative routes, have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned control number, OMB No. 2137-0510.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 177

Hazardous materials transportation, Radioactive materials, Alternative routes.

In consideration of the foregoing, 49 CFR Parts 171 and 177 are amended to read as follows:

PART 171—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.8, the definition "State-designated route" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"State-designated route" means a preferred route selected in accordance with U.S. DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantities of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for Part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

4. In § 177.825, paragraph (b)(1) is revised to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

* * * * *

(b) * * *

(1) A preferred route consists of either or both:

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section; and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter), in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials", or an equivalent routing analysis which adequately considers overall risk to the public. Designations must have been preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes. A State designated route is not effective until written notice has been given by the State, by certified mail, return receipt requested, to, and receipt acknowledged by, the Dockets Unit (DHM-30), Research and Special Programs Adminstration, U.S. Department of Transportation, Washington, DC 20590 (Attention: Registry of State-designated Routes, Docket HM-164A).

* * * * *

Issued in Washington, DC on May 6, 1988, under authority delegated in 49 CFR, Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88-10630 Filed 5-11-88; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Parts 173 and 177

[Docket No. HM-164B]

Notification to RSPA of Route Plans for Radioactive Materials Transportation

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to amend 49 CFR 173.22 and 177.825 to require carriers, rather than shippers, to give written notice to RSPA of route plans and other information relating to the transportation by highway of highway route controlled quantities (HRCQ) of radioactive materials. This action is necessary to correct problems related to late and inaccurate information that is being received under the current system. More accurate and timely information will facilitate more effective enforcement of the routing requirements for HRCQ shipments of radioactive materials.

FOR FURTHER INFORMATION CONTACT: John A. Gale, (202) 366-4488, Office of Hazardous Materials Transportation, RSPA, Washington DC 20590.

EFFECTIVE DATE: July 11, 1988.

SUPPLEMENTARY INFORMATION: On July 16, 1987, RSPA published Notice No. 87-9 (52 FR 26932) under Docket HM-164B which proposed to amend 49 CFR 173.22 and 177.825 to require carriers, rather than shippers, to give written notice to RSPA of route plans and other information relating to the transportation of HRCQ of radioactive materials.

RSPA received seven comments to Docket HM-164B, all of which supported the proposed changes. In addition, three commenters requested that additional provisions be added to the rule. For the reasons discussed in this document, RSPA denies these requests and adopts HM-164B essentially as proposed.

The National Transportation Safety Board (NTSB) recommended that shippers be given the added responsibility of evaluating the

adequacy of routes selected by the carriers. RSPA believes that carriers of HRCQ of radioactive materials should determine route plans utilizing State-designated alternative routes, interstate highways and beltways around cities. RSPA sees no benefit to the safety of the general public in requiring shippers to review these route plans and believes that shippers would have difficulty in exercising control over routes used by carriers. Therefore, no action is taken on this recommendation.

NTSB also recommended that the routing requirement for HRCQ quantities of radioactive materials be broadened to apply to any hazardous material that may pose a substantial threat to the general public when transported. This recommendation is beyond the scope of this rulemaking and, therefore, no action is taken on it in this final rule. However, RSPA intends to address routing requirements for certain hazardous materials in a forthcoming rulemaking action.

The Electric Utilities Companies' Nuclear Transportation Group (the "Group") recommended that carriers provide shippers with an indication of the date of submission of information to RSPA and with copies of all information provided to RSPA. The Group stated that this information could be used by a shipper to verify that a carrier has complied with the applicable requirements and to obtain accurate information concerning the HRCQ shipment. RSPA agrees that the first part of this request, i.e., that a carrier inform the shipper of the date when the applicable reporting requirement has been satisfied, may be of interest to the shippers. However, RSPA believes that this should be a contractual matter between the two parties and not a regulatory requirement. RSPA believes that the second part of the request, i.e., that the carriers provide the shipper with all the information submitted to RSPA, is unnecessary because (1) § 177.825(c) already mandates that the information required under paragraph (f)(1) be given by the carrier to the shipper, and (2) the shipper already possesses the information and documents covered by paragraph (f)(2) and (f)(3). Conseqently, no action is taken concerning the Group's recommendation.

The Department of Emergency Services of the Commonwealth of Virginia recommended that the routing agency of each State through which a HRCQ of radioactive material traverses also receive a copy of the route plan and all associated material from the carrier. This commenter said that this would help States ensure that shipments of HRCQ of radioactive material are transported over the safest possible routes. RSPA believes that adoption of this requirement is unnecessary. First, with the exception of national security shipments, the information requested already is available to the States through the Hazardous Materials Information System (HMIS) managed by RSPA. Second, Nuclear Regulatory Commission (NRC) regulations in 10 CFR Part 73, incorporated by reference at 49 CFR 173.22(c), already require that States be notified in advance of shipments of spent nuclear fuel. Although the NRC regulations do not apply to Department of Energy and Department of Defense shipments, those departments voluntarily provide prior notification to States except with respect to national security shipments.

With the exception of minor editorial revisions to § 177.825, RSPA is adopting the proposals contained in Notice No. 87–9 without change. In § 177.825(f), the reference to "§ 177.825(c) of this subchapter" has been changed to "paragraph (c) of this section"; the words "concerning the transportation of each such package" have been added for clarification; and the words "including all required amendments reflecting the routes actually used" have been substituted for a proposed (but unclear) parenthetical reference in paragraph (f)(1) to the requirements of § 177.825(c).

Administrative Notices

RSPA has determined that this rulemaking: (1) Is not "major rule" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612.

Paperwork Reduction Act

Information collection requirements contained in the current § 173.22(d) pertaining to providing RSPA with certain shipping information have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned control number, OMB No. 2137–0510.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Shippers' responsibility.

49 CFR Part 177

Hazardous materials transportation, Radioactive materials, Shippers, Carriers.

In consideration of the foregoing, 49 CFR Parts 173 and 177 are amended as follows:

PART 173—SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 continues to read:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

§ 173.22 [Amended]

2. In § 173.22, paragraph (d) is removed.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for Part 177 continues to read:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

4. In § 177.825, a new paragraph (f) is added to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

* * * * *

(f) Except for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR Part 73, each carrier who accepts for transportation a highway route controlled quantity of radioactive material (see § 173.401(1)), shall, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Director, Office of Hazardous Materials Transportation, RSPA:

(1) The route plan required under paragraph (c) of this section, including

all required amendments reflecting the routes actually used;

(2) A statement identifying the names and addresses of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the radioactive material in the shipment required by §§ 172.202 and 172.203 of this subchapter.

(Approved by the Office of Management and Budget under Control number 2137–0510)

Issued in Washington, DC on May 6, 1988 under authority delegated in 49 CFR, Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88–10631 Filed 5–11–88; 8:45 am]

BILLING CODE 4910–60–M

Federal Register

Thursday
May 12, 1988

Part VI

The President

Executive Order 12640—The President's Committee on Employment of People With Disabilities

Federal Register
Vol. 53, No. 92
Thursday, May 12, 1988

Presidential Documents

Title 3—

The President

Executive Order 12640 of May 10, 1988

The President's Committee on Employment of People With Disabilities

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to provide for the carrying out of the provisions of the Joint Resolution approved July 11, 1949, ch. 302, 63 Stat. 409, as amended, and the provisions of the Rehabilitation Act of 1973, P.L. 93–112, Section 501 (a)–(f), as amended, it is ordered as follows:

Section 1. *Establishment and Composition of the President's Committee.* (a) There is hereby established the President's Committee on Employment of People with Disabilities (hereinafter referred to as the Committee or as the President's Committee).

(b) The Committee shall be composed of a Chairman and not more than four Vice Chairmen, who shall be appointed by and serve at the pleasure of the President, and of so many other members as may be appointed thereto from time to time by the Chairman of the President's Committee from among persons (including representatives of organizations) who can contribute to the achievement of the objectives of the Committee. Members appointed by the Chairman shall be appointed for a term of 3 years and may be reappointed. The Chairman of the President's Committee may at any time terminate the service of any member of the President's Committee, except any member appointed by the President.

(c) The Chairman of the President's Committee, upon the advice of the Executive Committee (hereinafter provided for), may designate as, or invite to be, associate members of the President's Committee any heads of Federal departments or agencies that have responsibility for training and rehabilitation services or advocate activities touching the field of interest of the Committee or that are leading employers of individuals with disabilities.

(d) Representatives of business, industry, labor, private organizations, public agencies, other concerned organizations, and individuals with disabilities who are not members may be invited to attend meetings of the Committee.

Sec. 2. *Functions of the Committee.* The President's Committee shall provide advice and information as to the development of maximum employment opportunities for people who are physically disabled, mentally retarded, and mentally ill. To this end the Committee shall advise the President as to information that can be used by employers, labor unions, and national and international organizations, suggest programs for public education, and suggest methods of enlisting cooperation among organizations and agencies, Federal, State, and local officials, Governors' and local Committees on Employment of People with Disabilities, professional organizations, organized labor, and appropriate international organizations. In carrying out these functions vested in it by the Rehabilitation Act, as amended, the Committee shall be guided by the general policies of the National Council on the Handicapped and shall work closely with the Department of Labor, the Department of Education, the Department of Health and Human Services, the Veterans' Administration, State employment security agencies, and State vocational rehabilitation agencies.

Sec. 3. *Executive Committee.* (a) There is hereby established the Executive Committee of the President's Committee on Employment of People with

Disabilities. The Executive Committee shall be composed of the Chairman of the President's Committee, who shall also be the Chairman of the Executive Committee, the Vice Chairman of the President's Committee, and so many additional members as will provide an Executive Committee of not less than 15 and not more than 30 members. The said additional members shall be appointed for a term of 3 years by the Chairman of the President's Committee from among the members of the President's Committee or otherwise. The Chairman of the President's Committee may at any time terminate the service of any member of the Executive Committee.

(b) The Executive Committee shall advise and assist the Chairman of the President's Committee in the conduct of the business of the President's Committee and, as authorized by the President's Committee or the Chairman thereof (with due regard for the responsibilities of other Federal agencies), shall study the problems of people with disabilities in obtaining and retaining suitable employment, invite authorities in the various professional, technical, and other pertinent fields to advise it in the exploration of those problems, and review plans and projects for advocating the employment of people with disabilities.

Sec. 4. *Advisory Council.* There is hereby established the Advisory Council on Employment of People with Disabilities, which shall advise the President's Committee with respect to the responsibilities of the Committee. The Council shall be composed of the Chairman of the President's Committee, who shall also be the Chairman of the Council, and of the following-named officers, or their respective alternates: Secretary of State, Secretary of the Treasury; Secretary of Defense; The Attorney General; Secretary of the Interior; Secretary of Agriculture; Secretary of Commerce; Secretary of Labor; Secretary of Health and Human Services; Secretary of Housing and Urban Development; Secretary of Transportation; Secretary of Education; Chairman, Equal Employment Opportunity Commission; Administrator of General Services; Director, Office of Personnel Management; Director, United States Information Agency; Administrator of Veterans' Affairs; and the Postmaster General.

Sec. 5. *Administrative and Incidental Matters.* (a) The President's Committee, the Executive Committee, and the Advisory Council shall each meet on call of the Chairman of the President's Committee at a time and place designated by the Chairman. In the case of the President's Committee and the Executive Committee, the Chairman shall call at least one meeting and two meetings, respectively, to be held during each calendar year.

(b) In the absence of designation by the President, the Chairman of the President's Committee may from time to time designate a Vice Chairman of the President's Committee to be one or more of the following-named in the absence of the Chairman: Acting Chairman of the President's Committee, Acting Chairman of the Executive Committee, and Acting Chairman of the Advisory Council. The Chairman of the President's Committee shall from time to time assign other duties to the Vice Chairmen thereof.

(c) The Chairman of the President's Committee shall on behalf of the President direct the President's Committee and its functions.

(d) The Chairman may from time to time prescribe such necessary rules, procedures, and policies relating to the President's Committee, the Executive Committee, and the Advisory Council, and to their affairs, as are not inconsistent with law or with the provisions of this Order.

(e) The Vice Chairmen shall advise and counsel the Committee and shall represent the Committee on appropriate occasions.

(f) All members (including the Chairman and Vice Chairmen) of the President's Committee, the Executive Committee, and the Advisory Council shall serve without compensation. The Chairman and the Vice Chairmen of the President's Committee may receive transportation and per diem allowances as authorized by law for persons serving without compensation. Persons with

disabilities serving as Chairman or Vice Chairmen may be compensated for attendant expenses, consistent with government procedures and practices.

(g) Employees of the President's Committee shall be appointed, subject to law, and shall be directed by the Chairman of the Committee. To such extent as may be mutually arranged by the Chairman of the Committee and the Secretary of Labor, employees of the Committee shall be subject to the administrative rules, regulations, and procedures of the Department of Labor.

(h) The Department of Labor is requested to make available to the President's Committee necessary office space and to furnish the Committee, under such arrangements respecting financing as may be appropriate, necessary equipment, supplies, and services. The estimates of appropriations for the operations of the Committee shall be included within the framework of the appropriations structure of the Department of Labor, in such manner as the Director of the Office of Management and Budget may prescribe. The Chairman of the Committee, in cooperation with the Assistant Secretary for Administration and Management of the Department of Labor, shall be responsible for the preparation and justification of the estimates of appropriations for the Committee.

Sec. 6. *Reporting.* The President's Committee shall report annually to the President, who may apprise the Congress, and other interested organizations and individuals on the progress and problems of maximizing employment opportunities for people with disabilities.

Sec. 7. *Prior Orders; Transition.* (a) To the extent that this Order is inconsistent with any provision of any prior order, or with any provisions of any regulation or other measure or disposition, heretofore issued, made, or taken by the President or by any other officer of the Executive branch of the Government, this Order shall control. Executive Order No. 11480 of September 9, 1969, as amended, is hereby superseded.

(b) Without further action by the President or the Chairman of the Committee, all members, employees, records, property, funds, and pending business of the President's Committee on Employment of the Handicapped provided for in Executive Order No. 11480 of September 9, 1969, as amended, shall on the date of this Order become members, employees, records, property, funds, and pending business of the Committee established by this Order.

(c) The tenure of persons as members of the Committee in pursuance of the provisions of Section 7(b) of this Order, (i), in the case of persons appointed to the predecessor Committee by the President, shall be at the pleasure of the President, and (ii), in the case of other members, shall be for periods equal to their respective unexpired terms under Executive Order No. 11480, as amended, but shall also be subject to the provisions of the last sentence of Section 1(b) of this Order.

Ronald Reagan

THE WHITE HOUSE,
May 10, 1988.

[FR Doc. 88-10836
Filed 5-11-88; 10:49 am]
Billing code 3195-01-M

federal register

Thursday
May 12, 1988

Part VII

Veterans Administration

Veterans' Advisory Committee on Environmental Hazards; Meeting

VETERANS ADMINISTRATION

Veterans' Advisory Committee on Environmental Hazards Notice of Meeting

The Veterans Administration gives notice under Pub. L. 92–463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purposes of the Committee are to review the scientific and medical literature relating to the possible health effects resulting from exposure to dioxin and to assist in the development of Agency policy with respect to veterans' claims for compensation based upon exposure.

The meeting will be a Conference Call which is scheduled for May 27, 1988, at 3:00 p.m.—4:00 p.m., in room 815. The Dioxin Panel will be discussing their assessment of a report by Richard A. Albanese, M.D., "United States Air Force Personnel and Exposure to Herbicide Orange."

This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mr. Frederic Conway, Veterans Administration Central Office (phone 202–233–2115) prior to May 25, 1988.

Dated: May 9, 1988.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–10848 Filed 5–11–88; 11:22 am]

BILLING CODE 8320–01–M

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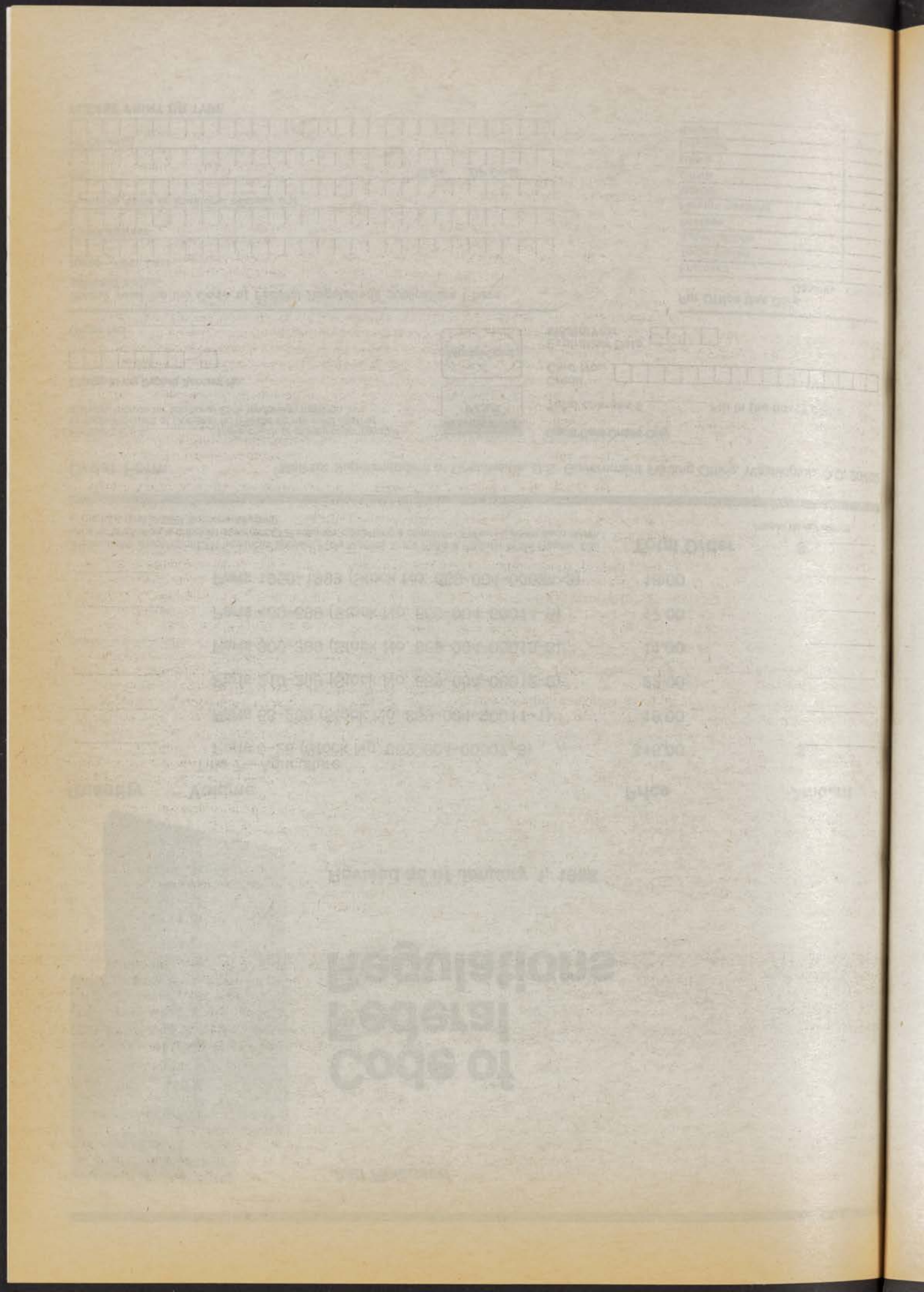
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